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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted] 1924

No. [redacted] 181

OZARK PIPE LINE CORPORATION, APPELLANT,

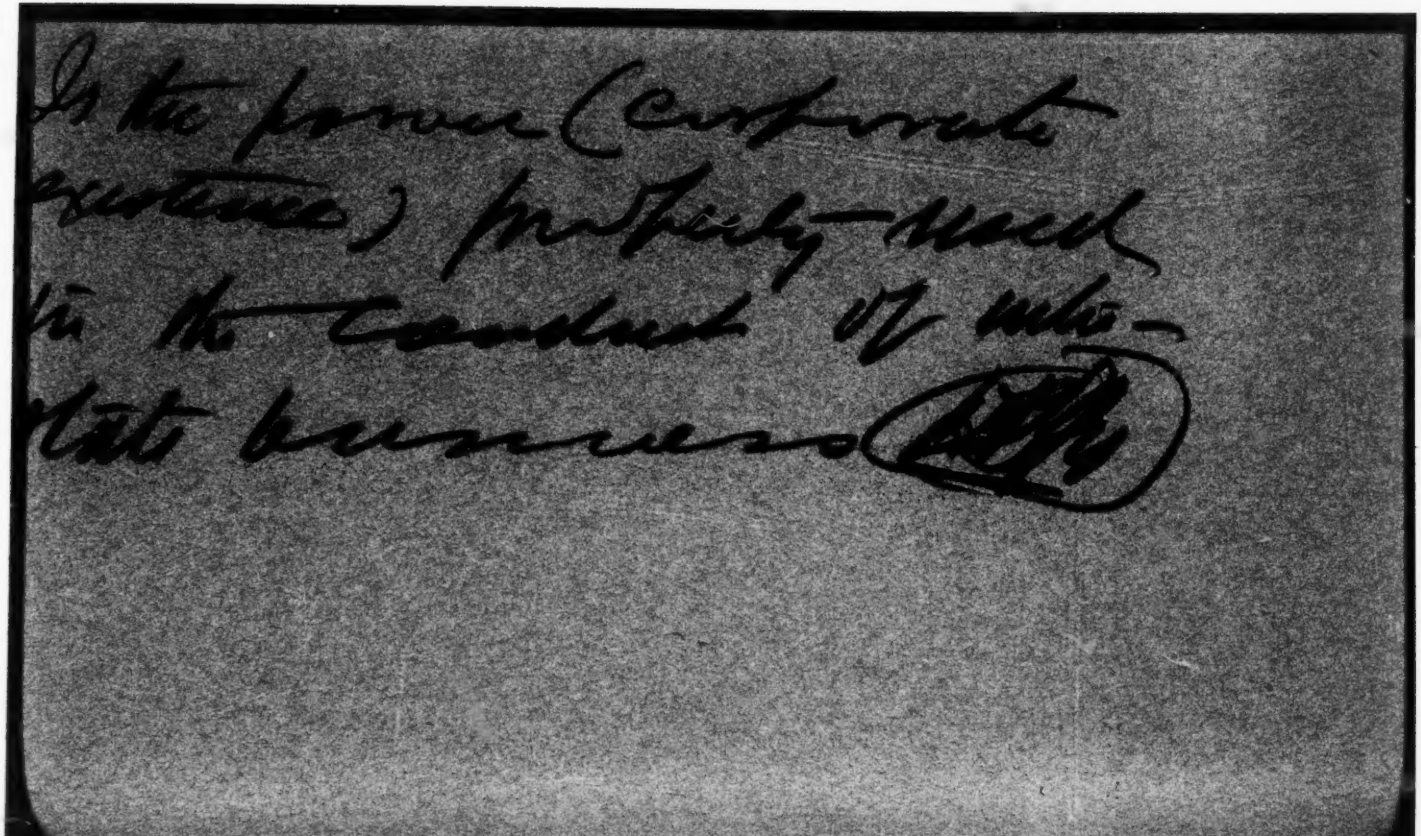
vs.

ROY MONIER AND GEORGE M. HAGER, CONSTITUTING THE STATE TAX COMMISSION OF THE STATE OF MISSOURI, AND JESSE W. BARRETT, ATTORNEY GENERAL OF THE STATE OF MISSOURI

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI

FILED SEPTEMBER [redacted], 1925

(29,385)



(29,885)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923

No. 575

OZARK PIPE LINE CORPORATION, APPELLANT,

vs.

ROY MONIER AND GEORGE M. HAGEE, CONSTITUTING THE STATE TAX COMMISSION OF THE STATE OF MISSOURI, AND JESSE W. BARRETT, ATTORNEY GENERAL OF THE STATE OF MISSOURI

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI

INDEX

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 15, 1923

[fol. a] CITATION AND SERVICE [omitted; printed side p. 89]

[fol. b] [Endorsed:] No. 33. United States District Court, Central Division of the Western District of Missouri. The Ozark Pipe Line Co. vs. Roy Monier, George N. Hagee, and Jesse W. Barrett. Citation. Filed 29th day of May, 1923. Edwin R. Durham, Clerk. By F. J. Framman, D. C.

[fol. 1] Be it remembered, That on the 9th day of May, A. D. 1922, the same being in vacation time of the United States District Court for the Central Division of the Western District of Missouri, the following among other proceedings of the same day was had, made and entered of record, to-wit:

(33)

OZARK PIPE LINE CORPORATION, a Corporation, Plaintiff,

vs.

ROY MONIER AND GEORGE M. HAGEE, Constituting the State Tax Commission of the State of Missouri, and Jesse W. Barrett, Attorney General of the State of Missouri, Defendants

Now on this day comes the plaintiff by its attorneys and files its petition in the office of the Clerk of the United States District Court for the Central Division of the Western District of Missouri, at Jefferson City, Missouri.

And said petition, so filed as aforesaid, is in words and figures as follows, to-wit:

IN THE

DISTRICT COURT OF THE UNITED STATES FOR THE CENTRAL DIVISION OF THE WESTERN DISTRICT OF MISSOURI

[Title omitted]

BILL OF COMPLAINT—Filed May 9, 1922

Now comes the plaintiff, Ozark Pipe Line Corporation, and files this, its complaint against Roy Monier and George M. Hagee, con-
[fol. 2] stituting the State Tax Commission of the State of Missouri, and Jesse W. Barrett, Attorney General of the State of Missouri, and complaining of said defendants, this plaintiff says:

Plaintiff is a corporation organized and existing under and by virtue of the laws of the State of Maryland.

Plaintiff states that the defendants, Roy Monier and George M. Hagee, are all of the members of the State Tax Commission of the

State of Missouri and that the defendant, Jesse W. Barrett, is the Attorney General of the State of Missouri.

Plaintiff further states that it owns and operates a pipe line for the transportation of crude petroleum from the State of Oklahoma to the town of Woodriver, in the State of Illinois; that the western terminus of said pipe line is at or near the town of Cushing, in the State of Oklahoma, and that the eastern terminus of said pipe line is at or near the town of Woodriver, in the State of Illinois, and that said pipe line extends from said town of Cushing in a Northeasterly direction across the State of Oklahoma to the Missouri border, and thence in a Northeasterly direction across the State of Missouri to the Mississippi River at a point a few miles North of the City of St. Louis and opposite the town of Woodriver, Illinois, and thence under the Mississippi River into the State of Illinois and to said town of Woodriver.

Plaintiff states that it is engaged solely in the business of operating said pipe line and certain gathering lines in the State of Oklahoma and is engaged solely in the business of conducting crude petroleum through said pipe line from the State of Oklahoma to the State of Illinois, and through and across the State of Missouri; [fol. 3] that it does no business within the State of Missouri; that it receives no consignments of oil within the State of Missouri, and delivers no consignments of oil within the State of Missouri, but transports all consignments of oil through the State of Missouri from Oklahoma to Illinois, and that it is engaged entirely in the business of interstate commerce and does no intra-state business within the State of Missouri.

Plaintiff states that since it began the operation of said pipe line it has been assessed for general property taxes upon that portion of its pipe line within the State of Missouri and upon other assets within the State of Missouri, and has paid said taxes for previous years and for the year 1921 to the State of Missouri and the various counties through which said pipe line passes.

Plaintiff further states that during the year 1921 it paid to the State of Missouri in addition to said general ad valorem, property taxes, the following, to-wit; A registration fee of Five Dollars ($5.00) as required by the laws of Missouri, and a license fee of Three Thousand Seven Hundred Five Dollars ($3,705.00) as hereinafter set out.

Plaintiff states that on the 9th day of January, 1920, it complied with the laws of the State of Missouri applicable to corporations for pecuniary profit formed in other states and desiring to be authorized or permitted to transact business in the State of Missouri, to-wit: with Section 9790 of the Revised Statutes 1919. That said Section provides as follows:

9790. "Every corporation for pecuniary profit formed in any other state, territory or country, before it shall be authorized or permitted to transact business in this State, or to continue business therein if already established, shall have and maintain a public office or place in this State for the transaction of its business where legal

service may be obtained upon it, and where proper books shall be kept to enable such corporation to comply with the constitutional and statutory provisions governing such corporations, and such cor- [fol. 4] poration shall be subject to all the liabilities, restrictions and duties which are, or may be, imposed upon corporations of like character organized under the general laws of this State, and shall have no other or greater powers."

Plaintiff states that it also on said January 9, 1920, complied with the provisions of Section 9792 of the Revised Statutes of Missouri of 1919 which provides as follows:

9792. "Every company incorporated for the purpose of gain under the laws of any other state, territory or country, now or hereafter doing business within this State shall file in the office of the Secretary of State a copy of its Charter or Articles of Association, duly authenticated by the proper authority, together with a sworn statement under its corporate seal particularly setting forth the character of the business which it is engaged in carrying on, or which it proposes to carry on in this state; and the principal officer or agent in Missouri shall make and forward to the Secretary of State, with the affidavits required a statement sworn to of the proportion of the capital stock of said corporation which is represented by its property located and business transacted in Missouri, which statement shall set out the location of its principal office or place in this state for the transaction of its business where legal service may be obtained upon it. Such corporation shall be required to pay into the state treasury upon the proportion of its capital stock represented by its property and business in Missouri, incorporating tax and fees equal to those required of similar corporations formed within and under the laws of this State, with an addition of Ten Dollars ($10.00) as a fee for issuing the license authorizing it to do business in this State. Upon compliance with these provisions by the corporation, the Secretary of State shall give a certificate that said corporation has duly complied with the law and is authorized to engage only in the business set out in the statement filed with its charter."

Plaintiff states that on said January 9, 1920, it had an authorized capital of Ten Million Four Hundred Thousand Dollars ($10,400,000.00) and that it paid to the State of Missouri a license tax amounting to Two Thousand Six Hundred Ninety-six Dollars Fifty Cents ($2,696.50) and obtained authority to employ the sum of Five Mil- [fol. 5] lion Three Hundred Nineteen Thousand Two Hundred One Dollars Ninety-one Cents ($5,319,201.91) of its capital within the State of Missouri, for which a license was duly issued to it on the 9th day of January, 1920, by the State of Missouri; and plaintiff states that thereafter it increased its authorized capital stock to Thirty Million Dollars ($30,000,000.00) and on August 18, 1921, it filed with the Secretary of State of Missouri amended articles of incorporation showing said increase in its capital stock and paid a license tax of Three Thousand Seven Hundred Five Dollars ($3,705.00) and obtained authority to employ Twelve Million Seven Hundred Twenty

Thousand Dollars ($12,720,000.00) of its capital within the State of Missouri, for which a license was duly issued to it on August 18, 1921, by the State of Missouri.

Plaintiff states that it complied with said provisions for the reason that it desired to do an interstate business through and across the State of Missouri, and desired to exercise all of the rights, powers and privileges of pipe line companies incorporated under the laws of the State of Missouri, and among other things desired to have the privilege of eminent domain which is granted pipe line companies organized under the laws of the State of Missouri by Section 1791 of the Revised Statutes of 1919.

Plaintiff states that the Supreme Court of the State of Missouri in the case of Southern Illinois & Missouri Bridge Co. vs. Stone, 174 Mo. 1, has ruled that a foreign corporation complying with the provisions of the statutes of Missouri enabling it to transact business in the State of Missouri has the same rights and privileges, including the right of eminent domain, as is granted to similar corporations organ-
[fol. 6] ized under the laws of the State of Missouri.

Plaintiff states that the license to transact business in Missouri as provided for by Section 9792 of said Revised Statutes of Missouri of 1919 is more than a mere license to do an intrastate business within said State, but is a valuable right conferred upon foreign corporations doing an interstate business within the State of Missouri which desire to exercise the right of eminent domain, to buy or condemn rights of way, and to own, operate and maintain public utilities within the State of Missouri and to exercise all powers granted to similar corporations of the State of Missouri by the Revised Statutes of said State.

Plaintiff states that it is a common carrier of crude petroleum, and is a public utility, and is so recognized by said Section 1791 of the Revised Statutes of Missouri of 1919 conferring upon pipe line companies the right of eminent domain.

Plaintiff further states that during the year 1921 there was upon the statute books of the State of Missouri, and apparently in force, a law providing for the payment to said state of an annual franchise tax by corporations; that said law was first passed on the 9th day of April, 1917, and is found in the Laws of Missouri of 1917, at page 237, that said law was subsequently amended on May 6, 1919, which amendment is found in the Laws of Missouri of 1919, page 237, and that said law as amended was published as a part of the Revised Statutes of Missouri 1919, Section- 9836 to 9848 inclusive, and that said Sections were subsequently amended on August 4, 1921, which said amendment is found in the Laws of Missouri, 1921, Extra Session, page 121.

[fol. 7] Plaintiff states that from January 1, 1921, to August 4, 1921, the said Sections 9836 to 9848 inclusive, of Revised Statutes of Missouri 1919, were in force and effect so far as they were valid and applicable, and that the defendants have attempted to and are attempting to enforce the provisions of said Articles of the Revised Statutes of 1919 against this plaintiff.

Plaintiff states that by Section 9836 aforesaid it is provided as follows:

9836. "Every corporation organized under the laws of this state shall, in addition to all other fees and taxes now required or paid, pay an annual franchise tax to the state of Missouri equal to one-tenth of one per cent of the par value of its outstanding capital stock and surplus, or if such corporation employs a part of its capital stock in business in another state or country, then such corporation shall pay an annual franchise tax equal to one-tenth of one per cent of its capital stock employed in this state, and for the purposes of this article such corporation shall be deemed to have employed in this state that proportion of its entire outstanding capital stock and surplus that its property and assets in this state bears to all its property and assets wherever located. Every corporation, not organized under the laws of this state, and engaged in business in this state, shall pay an annual franchise tax to the state of Missouri equal to one-tenth of one per cent of the par value of its capital stock and surplus employed in business in this state, and for the purposes of this article such corporation shall be deemed to have employed in this state that proportion of its entire capital stock and surplus that its property and assets in this state bears to all its property and assets wherever located: Provided, that this law shall not apply to corporations not organized for profit, nor to express companies, which now pay an annual tax on their gross receipts in this state, and insurance companies which pay an annual tax on their gross premium receipts in this state."

Plaintiff states that by Section 9837 aforesaid it is provided that every corporation liable to the tax prescribed shall make a report in writing to the Missouri State Tax Commission.

That by Section 9838 it is provided as follows:

[fol. 8] 9838. "The state tax commission, or the state board of equalization, as the case may be, shall, on or before the 20th day of February in each year determine from the facts reported, and from any facts within or coming to its knowledge the proportion of the capital stock and surplus of each corporation employed in business in this state and the amount of the tax each corporation is liable to pay under the provisions of this article and shall report the same to the state auditor, who shall make out a tax bill therefor against each corporation and shall deliver the same to the state treasurer and charge him therewith. The taxes provided for in this article shall be paid on or before the 15th day of April in each year and shall be due and payable to the state treasurer without notice, who shall make out and deliver a receipt therefor, which shall recite that the corporation named therein has paid its annual franchise tax under the provisions of this article for the year ending on the 31st day of the following December."

That by Sections 9842, 9843 and 9844 it is provided as follows:

9842. "The taxes and penalties to be paid by the provisions of this article shall be a first lien on all property and assets of the corporation within this state."

9843. "If any corporation fails or refuses to pay the taxes assessed against it under the provisions of this article on or before the first day of May the state treasurer shall certify a list of such corporations so delinquent to the attorney-general, who shall proceed forthwith to collect the same, together with a penalty of twenty-five per cent, and interest at the rate of one per cent per month. Suits for the collection of such taxes may be brought in the name of the state in any court of competent jurisdiction and any judgment rendered therein in favor of the state shall be a first lien on all the property and assets of the corporation within this state."

9844. "If any corporation subject to the provisions of this article shall fail or neglect to make the report herein required, or within the time herein required, such corporation, if organized under the laws of the state, shall forfeit its charter, or, if a foreign corporation, shall forfeit its right to engage in business in this state, and the attorney-general, or at his direction, the prosecuting attorney of the county in which such corporation has its principal business office, shall bring an action in the name of the state in some court of com- [fol. 9] petent jurisdiction to annul the charter or revoke the license of such corporation to engage in business in this state."

Plaintiff states that during the year 1921 it did not make such report and that the defendant, Jesse W. Barrett, is threatening to cause an action to be brought in the name of the state against the plaintiff in some court of competent jurisdiction to revoke the license of the plaintiff obtained from the State of Missouri as aforesaid on the 9th day of January, 1920, and that the defendants, Roy Monier and George M. Hagee, constituting the State Tax Commission of the State of Missouri, are threatening to determine the amount of tax which, in their opinion, this plaintiff should have paid for the year 1921, and which would have been shown as due by such report, if any had been filed, prior to the 20th day of February, 1921, and to make out a tax bill therefor, and to deliver the same to Treaurer of the State in order that he may proceed to collect the same, together with a penalty of twenty-five per cent (25%) damages and interest at the rate of one per cent (1%) per month in accordance with the provisions of Section 9843.

Plaintiff states that the total par value of its outstanding capital stock and surplus prior to the increase of its capital stock as shown by the renewal of its license on August 18, 1921, as aforesaid, without deducting liabilities, amounted to Eight Million Nine Hundred Sixteen Thousand One Hundred Dollars ($8,916,100.00), and that the total par value of its outstanding capital stock and surplus after said increase of capital stock amounted to Twenty-six Million Nine

Hundred Sixteen Thousand One Hundred Dollars ($28,916.-100.00).

That Section 9836 Revised Statutes of Missouri 1919, aforesaid, provides that the franchise tax upon foreign corporations in the state shall be

[fol.10] "Equal to one-tenth of one per cent of the par value of its capital stock and surplus employed in business in this state, and for the purposes of this article such corporation shall be deemed to have employed in this state that proportion of its entire outstanding capital stock and surplus that its property and assets in this state bears to all its property and assets wherever located."

Plaintiff states that the Supreme Court of the State of Missouri in the case of State ex rel. Marquette Hotel & Investment Company vs. State Tax Commission, et al., 221 S. W. Rep. 721, ruled that the word "surplus" as it occurs in this Act means the excess of gross assets over the outstanding capital stock without deducting debts or liabilities.

Plaintiff further states that approximately fifty-three per cent (53%) of its total assets consist of the assets located within the State of Missouri, and that if it is required to pay a franchise tax levied upon fifty-three per cent (53%) of its outstanding capital stock and surplus without deducting liabilities said tax would amount to approximately Four Thousand Seven Hundred Twenty-five Dollars Fifty-three Cents ($4,725.53) for the year 1921, and approximately Seven Thousand One Hundred Thirty-two Dollars Seventy-four Cents ($7,132.74) for subsequent years on account of the increase of its capital stock, as shown by its renewed license of August 18, 1921, and on account of the reduction in the rate of tax from one-tenth of one per cent to one-twentieth of one per cent by the amendment of August 4, 1921, Laws of Missouri of 1921 Extra Session, page 121.

Plaintiff states that it is not liable for the tax aforesaid, and is not required to make the report aforesaid for the following reasons, to-wit:

First. It is not engaged in business in the State of Missouri, and Section 9838 is applicable by its express provisions only to corpora-[fol. 11] tions organized under the laws of the State of Missouri, or to corporations not organized under the laws of said state and engaged in business in said state.

Second. Said statutes as applied to this plaintiff are unconstitutional in that they attempt to levy a tax upon interstate commerce and place a burden upon interstate commerce in contravention of the commerce clause of the Constitution of the United States, to-wit, Article 1, Section 8 thereof.

Plaintiff states that if the Tax Commission of the State of Missouri shall issue a tax bill as aforesaid against the plaintiff, that said tax bill would become a cloud upon the title of the plaintiff to its pipe line and right of way in the State of Missouri by virtue of

Section 9842 aforesaid, which declares that said taxes shall be a first lien on all of the property and assets of the corporation within the state, and that the cloud of said tax bill would seriously hinder the plaintiff in the transaction of its business and interfere with its credit.

Plaintiff further states that it has no adequate remedy at law to prevent the issuance of said tax bill and the clouding of its title as aforesaid, or to prevent the revocation of its license issued to it by the State of Missouri on the 9th day of January, 1920, as aforesaid, and re-issued on August 18, 1921, as aforesaid, and that a Court of Equity alone has the power by writ of injunction to prevent the issuance of said tax bill and the creation of said cloud upon its title, and to prevent the revocation of license of the plaintiff issued by the State of Missouri as aforesaid.

[fol. 12] Plaintiff further states that this is a controversy wholly between citizens of different states, to-wit, the plaintiff, a corporation organized and existing under the laws of the State of Maryland, and the defendants, who are citizens and residents of the State of Missouri, and that the amount in controversy exceeds the sum of Three Thousand Dollars ($3,000.00) exclusive of interest and costs.

Wherefore, plaintiff prays that this Court enter its order, judgment and decree enjoining the defendants, Roy Monier and George M. Hagee, from undertaking to levy a tax as of the 20th day of February, 1921, under said Section 9838 against this plaintiff, and from issuing a tax bill therefor, and from delivering the same to the State Treasurer and enjoining the defendant, Jesse W. Barrett, Attorney General, from proceeding under Sections 9843 and 9844, and from bringing any action in the name of the state to revoke the license of this plaintiff issued by the State of Missouri on the 9th day of January, 1920, as aforesaid, and re-issued on the 18th day of August, 1921, as aforesaid, and from bringing any suit for the collection of the taxes for the said year of 1921.

Koerner, Fahey & Young, Attorneys for Plaintiff.

In United States District Court

Subpœna and Service

Whereupon on May 9th, 1922, a subpœna in chancery was issued to the United States Marshal for the Western District of Missouri, which was returned executed on May 16th, 1922, "by delivering a true copy of this writ to Roy Monier and George M. Hagee, constituting the State Tax Commission of the State of Missouri and Jesse W. Barrett, Attorney General of the State of Missouri all done in Cole County, Missouri, this 16th day of May, 1922.

(Signed) I. K. Parshall, U. S. Marshal Western District of Missouri, By A. B. Richter, Deputy M. Marshal's fees, $6.00.

[fol. 13] And afterwards, to-wit, on June 3, 1922, the following proceedings were had in said cause, to-wit:

[Title omitted]

Now on this day come the defendants and file their answer to the bill of complaint herein.

And said answer so filed as aforesaid, is in words and figures as follows, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE CENTRAL DIVISION OF THE WESTERN DISTRICT OF MISSOURI

[Title omitted]

ANSWER—Filed June 3, 1922

The joint answer of Roy Monier and George M. Hagee, and Jesse W. Barrett, the above named defendants, to the bill of complaint of the Ozark Pipe Line Corporation, plaintiff.

In answer to the said bill of complaint, defendants admit that plaintiff is a corporation organized and existing under and by virtue of the laws of Maryland; admit that Roy Monier and George M. Hagee are all of the members constituting the State Tax Commission of the State of Missouri; admit that Jesse W. Barrett is the Attorney-General of the State of Missouri; admit that plaintiff owns and operates a pipe line for the transportation of crude petroleum from the State of Oklahoma to the town of Woodriver in the State of Illinois.

[fol. 14] Defendants neither admit nor deny that the western terminus of said pipe line is at or near the town of Cushing, in the State of Oklahoma and that the eastern terminus of said pipe line is at or near the town of Woodriver, in the State of Illinois, and call for proof as plaintiff may be advised; defendants neither admit nor deny that said pipe line extends from said town of Cushing in a northeasterly direction across the State of Oklahoma to the Missouri border, and call for proof as plaintiff may be advised; admit that said pipe line extends in a northeasterly direction across the State of Missouri to the Mississippi River at a point a few miles north of the City of St. Louis and opposite the town of Woodriver, Illinois, but neither admit nor deny that said pipe line extends thence under the Mississippi River into the State of Illinois and on to Woodriver, and call for proof as plaintiff may be advised.

Defendants neither admit nor deny that plaintiff is engaged solely in the business of operating said pipe line and certain gathering lines in the State of Oklahoma and is engaged solely in the business of conducting crude petroleum through said pipe lines from the State of Oklahoma to the State of Illinois and through and across the State of Missouri, and leave plaintiff to its proof.

Defendants deny that said plaintiff pipe line company does no business within the State of Missouri, but aver the fact to be that plaintiff is, and was at all times mentioned herein, engaged in business within this State; defendants neither admit nor deny that plaintiff receives no consignments of oil within the State of Missouri and delivers no consignments of oil within the State of Missouri, but [fol. 15] transports all consignments of oil through the State of Missouri from Oklahoma to Illinois, and that it is engaged entirely in the business of interstate commerce and does no intrastate business within the State of Missouri, and leave plaintiff to its proof.

Defendants neither admit nor deny that plaintiff has, since it began the operation of said pipe line, been assessed for general property taxes upon that portion of its pipe line within the State of Missouri and upon other assets within the State of Missouri, and has paid taxes for previous years and for the year 1921, to the State of Missouri, and the various counties through which said pipe line passes, but aver that should it be a fact that plaintiff has been so assessed and said property taxes as alleged in its bill, as aforesaid, yet this fact will and does not relieve nor justify plaintiff from making its report to the State Tax Commission of the State of Missouri and paying a Franchise Tax upon its capital stock and assets employed in business within Missouri as it is required to do in accordance with the terms of Sections 9836, 9837, 9838, 9842, 9843, 9844, 9846, 9847 and 9848 of the Revised Statutes of Missouri, 1919, and as amended by Laws of Missouri, 1921, (Extra Session) page 122.

Defendants admit the payment by plaintiff, during the year 1921, the sum of Five Dollars ($5.00) to the State of Missouri as a license fee as alleged in paragraph two (2), page three (3) of its bill of complaint.

Defendants admit that plaintiff did, on the 9th day of January, 1920, comply with Section 9790 of the Revised Statutes of Missouri, 1919, authorizing it to transact business in the State of Missouri and that said section reads as recited on page four (4) of plaintiff's bill of complaint.

[fol. 16] Defendants admit that plaintiff did, on the 9th day of January, 1920, comply with Section 9792, of the Revised Statutes of Missouri, 1919, as alleged on page four of its bill of complaint and that said section reads as recited therein.

Defendants neither admit nor deny that plaintiff had, on January 9, 1920, an authorized capital of Ten Million, Four Hundred Thousand Dollars, ($10,400,000.00) and that it paid to the State of Missouri a license tax of Two Thousand, Six Hundred Ninety-six Dollars and Fifty Cents, ($2,696.50) and obtained authority to employ the sum of Five Billion, Three Hundred Nineteen Thousand Two Hundred One Dollars and Ninety-one Cents ($5,319,201.91) of its capital within the State of Missouri, and leave plaintiff to its proof; admit that a license was issued to plaintiff on January 9, 1920, authorizing it to do business in Missouri.

Defendants neither admit nor deny that subsequent to January 9, 1920, plaintiff increased its authorized capital stock to Thirty Million Dollars ($30,000,000.00) and require proof as plaintiff may

advised; admit that on August 18, 1921 plaintiff filed with the Secretary of State of the State of Missouri, amended articles of incorporation purporting to show an increase in its capital stock as aforesaid; defendants neither admit nor deny that plaintiff paid to the State of Missouri a license tax of Three Thousand, Seven Hundred Five Dollars ($3,705.00) and obtained authority to employ Twelve Million, Seven Hundred Twenty Thousand Dollars ($12,720.00) of its capital within the State of Missouri, on said 18th day of August, 1921, and require proof as plaintiff may be advised; admit that a license to do business in Missouri was issued to plaintiff on the last above mentioned date.

[fol. 17] Defendants deny plaintiff's allegation at the bottom of page twelve (12) and top of page thirteen (13) of its bill of complaint that plaintiff is not liable for a franchise tax, as aforesaid, and aver that plaintiff is engaged in business in the State of Missouri and subject to all the provisions of the Corporation Franchise Tax Laws of the State of Missouri as contained in Sections 9836, 9838, 9843, and 9844 of the Revised Statutes of Missouri, 1919, referred to and set out in plaintiff's bill of complaint.

Defendants further deny that the aforesaid statutes as applied to this plaintiff are unconstitutional in that they attempt to levy a tax upon interstate commerce and thereby place a burden upon interstate commerce in contravention of the commerce clause in Article 1, Section 8, of the Constitution of the United States.

Further answering, defendants aver that plaintiff, in the course and conduct of its business in the State of Missouri, among other things, was and is engaged in transporting crude petroleum in Missouri; has been for a long time and is now maintaining and operating three oil pumping stations within this state; has long since established and is now maintaining its principal office and headquarters in Missouri, at which its stockholders' and directors' meetings are held, and the officers of the corporation have their offices and direct the affairs and activities of the corporation therefrom; make all contracts; declare, receive and pay dividends; keep its records and financial books and perform constantly divers and sundry other acts of business therein and therefrom within the State of Missouri.

Having thus made a full answer to all the matters and things contained in the bill these defendants pray that the bill be dismissed [fol. 18] and for judgment for their costs in this behalf incurred.

Roy Monier, George M. Hagee, Members of the State Tax Commission of Missouri. Jesse W. Barrett, Attorney General of Missouri. By J. Henry Caruthers, Special Assistant Attorney General of Missouri.

And afterwards, to-wit, on November 27, 1922, the following proceedings were had in said cause, to-wit:

[Title omitted]

Now on this day comes the plaintiff by its attorneys and files a reply memorandum to the answer of defendants.

And said reply so filed as aforesaid, is in words and figures as follows, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE CENTRAL DIVISION OF THE WESTERN DISTRICT OF MISSOURI

[Title omitted]

[fol. 19] REPLY MEMORANDUM FOR PLAINTIFF—Filed Nov. 27, 1922

We desire briefly to reply to some of the arguments contained in the memorandum prepared by learned counsel for the defendants. In that memorandum counsel comments on several decisions, and then says at page 6,

"Therefore, it is well settled that a foreign corporation engaged in interstate commerce may be taxed on the value of its property and assets owned and used or employed in business in Missouri."

Now this is perfectly true, but it is not the question presented here. The Ozark Pipe Line Corporation does pay a tax on all of its property in Missouri. Its right of way in Missouri is assessed for taxation and that tax is paid. In several cases cited by defendants the Court was confronted with a tax which was levied upon a right of way, or which was, though in form a license tax, actually assessed in lieu of a tax upon the right of way. for example, in Postal Telegraph Cable Company v. Adams, 155 U. S. 688, the syllabus reads,

"A State privilege tax of a certain amount per mile of wires operated within the state, imposed on all telegraph companies therein operating, in lieu of all other state, county and municipal taxes, and amounting to less than the ordinary ad valorem tax, is substantially a mere tax on property, to which a foreign corporation operating within the state is subject, notwithstanding it is engaged in interstate commerce," etc.

The distinction between a privilege or excise tax and a tax upon property is vital. The state can levy a tax upon all property within its borders whether that property is used in interstate commerce or not. If the property belongs to a railroad company and is constantly being moved about from one state to another so that it is [fol. 20] impossible for the state to ascertain how many cars of any given railroad company are *are* within the state on a certain day when the tax is in theory levied, the state may resort to other meth-

ods and tax the company on a mileage basis, or upon that proportion of its capital which the total mileage in Missouri bears to the total mileage everywhere. Whatever the form may be, if the tax is intended as a property tax it will be sustained provided, of course, it is fair and reasonable and is not so figured as to violate any fundamental property rights.

Here we are not concerned with this question at all. The state of Missouri, as stated above, does levy and collect a tax upon the right of way of the Ozark Pipe Line Corporation considered as property. The question here is, has it a right to levy a tax upon the privilege of doing the business which the Ozark Pipe Line Corporation does? Counsel cite at page 4 the following language:

"But property in a State belonging to a corporation, whether foreign or domestic, engaged in foreign or interstate commerce, may be taxed, or a tax may be imposed on the corporation on account of its property within a State, and may take the form of a tax for the privilege of exercising its franchises within the State, if the ascertainment of the amount is made dependent in fact on the value of its property situated within the State (the exaction therefore, not being susceptible of exceeding the sum which might be leviable directly thereon), and if payment be not made a condition precedent to the right to carry on the business, but its enforcement left to the ordinary means devised for the collection of taxes."

Now, it will be noticed that the Court says that in such a case the exaction is so levied that it cannot exceed the sum which might be levied directly, that is, the method of figuring the tax is such that the Company cannot suffer by reason of the fact that the tax is in the [fol. 21] form of a privilege tax instead of in the form of a direct tax upon the property. In other words, it is in substance and fact a direct ad valorem tax upon property, and as the Company in the case, as stated by the Court, paid no other direct ad valorem tax upon its property it could not complain on account of the form of the tax in question unless it could show that the result was a greater amount than that which would have been levied if the tax had been a direct ad valorem tax. The cases, therefore, which consider a tax levied in lieu of an ad valorem property tax are not in point.

Another line of cases cited deal with franchise taxes levied on account of intra-state business where a Company is engaged in both inter-state and intra-state business. In these cases the amount of the tax may be arrived at in different ways according to the various provisions of the statutes, but the cases are equally not in point for the reason that there is no effort here to levy a privilege tax upon a Company *an* account of any intra-state business for the plaintiff does no such business. For example counsel cite Hump Hair Pin Company vs. Emmerson at page 5 of their brief and quote as follows:

"As coming within this latter description, taxes have been so repeatedly sustained where the proceeds of interstate commerce have been used as one of the elements in the process of determining

the amount of a fund (not wholly derived from such commerce) to be assessed, that the principle of the cases so holding must be regarded as a settled exception to the general rule."

The clause in parentheses is, of course, the controlling clause. If the fund were wholly derived from interstate commerce it could not be taxed at all. The cases cited are simply concerned with the validity of various methods adopted by the states in ascertaining [fol. 22] the value of intra-state business as compared with total business where it is considered that the Company does an intra-state business and that such business is taxable, the only question being as to the propriety of the method adopted in taxing it. In the present case, however, there is nothing for the state to levy a privilege or excise tax on for there is no intra-state business done and the Company does not have to obtain from Missouri the privilege of doing an interstate business, nor can it be taxed by the State of Missouri on such business.

Counsel also cites numerous cases in various states in an attempt to show that the Ozark Pipe Line Corporation was doing business in Missouri. Now it is to be noticed that a Company might open an office in the State of Missouri either for the purpose of conducting a business interstate in charteter, or for the purpose of conducting some other sort of a business. If a Company is not engaged in interstate commerce at all, but opens an office in Missouri for the purpose of, let us say, soliciting life insurance, or for the purpose of maintaining, controlling or operating gold mines in Alaska, the State might levy a privilege tax upon the Company without coming in conflict with any federal provision in regard to interstate commerce. The tax may be valid, or it may be invalid, but if invalid it will not be because it is a tax upon interstate commerce. If, however, a Company opens an office in the State of Missouri for the purpose of conducting an interstate business only, the State of Missouri cannot levy a franchise tax upon it without conflicting with the provisions of the Federal Constitution protecting interstate commerce from such state taxation.

[fol. 23] It makes no difference whether a Company in maintaining an office within the state in such a sense that it can be served with process. A company which does nothing but an interstate business is, of course, subject to suit somewhere and it is no more than reasonable to say that it may be sued wherever it maintains an office for the transaction of business; whether the nature of the business be interstate or intra-state is not material. As a matter of course a Company may do business in a state although that business is interstate in character. In other words, all interstate business is business done within the borders of different states. We deem it unnecessary to review and undertake to distinguish the cases dealing with this question as to the validity of service. We believe there are sufficient decisions by the Courts of the United States to settle this controversy without reference to decisions from various state courts, many of which deal with a wholly different sort of controversy, and some of which we believe are erroneous when viewed in the light of the decisions of the Supreme Court of the United States.

The decision in the Case of Tidewater Pipe Company vs. State Board of Assessors, 57 N. J. 516, is, we submit, clearly based upon misapprehension of the effect of the decision in Maine vs. Grand Trunk Railway Company, 142 U. S. 217. The Grand Trunk Railroad Company was operating a railroad which was constructed by the Atlantic & St. Lawrence Railroad Company, which was a Maine Corporation. The statute of Maine provided,

"When a railroad lies partly within and partly without this state or is operated as a part of a line or system extending beyond a state, the tax shall be equal to the same proportion of the gross receipts in this State, as herein provided, and its amount determined [fol. 24] as follows * * * and the gross receipts in this state shall be taken to be the average gross receipts per mile, multiplied by the number of miles operated within the State."

It is thus obvious that the Company was doing business within the State of Maine, that it was operating under a Charter granted by the State of Maine, and the only question before the Court was as to the method of ascertaining the just amount of a franchise tax upon the Company on account of its business in Maine. The Courts says,

"The tax for the collection of which this action is brought is an excise tax upon the defendant corporation for the privilege of exercising its franchises within the State of Maine."

Clearly, therefore, the case is not authority for the proposition that a state may levy a franchise tax upon the privilege of doing an interstate business merely because the business is done through or across the state.

Counsel also call attention to the broad powers of the Ozark Pipe Line Corporation as conferred by its Charter. The question here, however, is not what powers the Company has under its Charter, but what sort of business does it actually do.

Conclusion

The present tax is a privilege or excise tax; it has been so declared by the Supreme Court of the State of Missouri in the case cited in our former brief. It is clearly not a general property tax for several reasons:

First. The state already collects a general property tax from the Company.

Second. A general property tax is based upon an appraisal, it must provide for a hearing and an assessment ad valorem.

[fol. 25] It is true that general property taxes are sometimes levied upon intangible property, rights of way, franchises of street railway companies, and others, but the tax in question here is not of that

sort. It is clearly a privilege tax and it is clearly levied upon the privilege of doing an interstate business through and across the State of Missouri.

The tax in question, therefore, we submit, is clearly one which it is beyond the power of the State of Missouri to levy.

All of which is respectfully submitted.

Koerner, Fahey & Young, Attorneys for Plaintiff.

IN UNITED STATES DISTRICT COURT

ORDER CONTINUING CAUSE

And afterwards, to-wit, on Monday, October 16, 1922, the same being the 1st day of the regular October, 1922, Term of said court, the following proceedings were had in said cause, to-wit:

[Title omitted]

Now on this day come the parties by their respective counsel and the cause coming on for hearing and the evidence heard and not having been concluded, it is ordered that further proceeding herein be continued.

And afterwards, to-wit, on Tuesday October 17, 1922, the same being the 2nd day of the regular October, 1922, Term of said court, [fol. 26] the further proceedings were had in said cause, to-wit:

[Title omitted]

Now on this day come again the parties by their solicitors, when evidence is further heard and the cause argued by counsel and submitted, and by the Court taken under advisement.

The abstract of the evidence is in words and figures as follows; to-wit:

IN THE UNITED STATES DISTRICT COURT, CENTRAL DIVISION, WESTERN DISTRICT OF MISSOURI

[Title omitted]

Abstract of the Evidence Prepared by Plaintiff

Said cause was called for trial before the Honorable Arba S. Van Valkenburgh, Judge, on the 16th day of October, A. D. 1922, and the following proceedings were had.

It was admitted that the plaintiff is a corporation organized under the laws of Maryland; that Roy Monier and George M. Hagee are all of the members of the State Tax Commission of the State of

Missouri; that Jesse W. Barrett is the Attorney General of the State of Missouri, and they are all of them residents and citizens of the [fol. 27] State of Missouri.

Plaintiff sustained the issues on its part by introducing evidence as follows, to-wit:

CARL BARKER, being called as witness for the plaintiff testified in substance as follows:

I am tax commissioner for the Ozark Pipe Line Corporation. I have here a blue print showing the line of the Ozark Pipe. Said blue print was marked "Exhibit A" and offered in evidence. The Southwestern terminus of the line is near Waurika, Oklahoma. It is at the place marked Burkton, Oklahoma. The line extends from Burkton through the State of Oklahoma and through the City of Cushing and up through the town of Verdi, and crosses the Missouri-Oklahoma border as shown on the map. Shellton, Roxdale and Yarma shown on the map are the names of our pumping stations. The line is a ten inch pipe line from Cushing to Woodriver, Illinois. The Northeastern terminus is near the City of Woodriver, Illinois. The pipe line goes under the Mississippi River and over to Woodriver.

The nature of the Company's business is that it transports crude petroleum by pipe line. It receives the crude petroleum at points in the State of Oklahoma and delivers it to Woodriver. It receives no shipment of oil in the State of Missouri. It makes no deliveries in the State of Missouri. Approximately fifty per cent (50%) of the property and assets of the Company lie within the State of Missouri, that is, pipe lines, rights of way and pumping stations, and physical assets. The Ozark Pipe Line Corporation is a common carrier. It receives shipment from any one that tenders them. It has rates on file with the Interstate Commerce Commission and complies with the orders of the Interstate Commerce Commission. The rates that are charged are the rates approved by the Interstate Commerce Commission in all cases. The Company does no other busi- [fol. 28] ness except the transportation of crude petroleum by pipe line.

The Company has offices in the State of Oklahoma and Missouri and Maryland. The stockholders' meetings are held in the State of Maryland. Meetings of Board of Directors are held wherever they get a quorum or necessity demands. The Directors reside partially in Missouri and partially in New York. There was a time when the majority of the directors resided in New York State. I think the meetings were held in New York at that time. I don't recall any meetings in Missouri then.

The Company pays general property taxes to the State of Missouri, general ad valorem taxes on its right of way and real estate and personal property. Witness here produced an original certificate issued by the Department of State of the State of Missouri to the Company, marked "Exhibit B," which authorized an increase of the

capital stock of the Company. Witness continued: The Company originally qualified to do business in Missouri for $5,319,201.90 and paid a license fee of $2,696.50, and then on August 18, 1921, there was a further tax of $3,705.00 when the Company qualified for an increase of capital stock. The Company has paid property taxes assessed against it in the State of Missouri right along, ad valorem taxes. Witness was here asked as to the efforts of the defendants to enforce the collection of a franchise tax. There was some discussion by counsel and court which showed that the Tax Commission was threatening to issue a tax bill which would become a lien upon the property; that it forwarded the name of the Company to the prosecuting officers of St. Louis for such action as might be necessary or advisable under the state statute for the purpose of either forfeiting the right of the Company to do business in Missouri or across Missouri, and in that stage of the proceedings the Company got the Commission to postpone action until this suit could be filed. [fol. 29] By the Court: I suppose it is not denied it is the purpose of the officers of the government to insist on this tax, to enforce it by all methods prescribed.

By Mr. Caruthers: No, sir. Your Honor, the state officials act—the officials undertake—in the first place, we undertook to have them report to the State Tax Commission as the statute requires. They failed to do that. Then we took it up with the prosecuting attorney of St. Louis and he took it up—

By the Court: Well that makes sufficient case for relief if they are entitled to it.

By Mr. Caruthers: I take it it does, Your Honor.

Counsel for plaintiff here offered in evidence Article 23, Section 88-G of the Laws of Maryland of 1920, effective June 1, 1920. Objection raised by counsel for defendants when counsel for plaintiff stated that the purpose was to show that the Company paid a franchise tax in the State of Maryland.

Witness continued: The amount of the tax in Missouri which is in controversy here for the year 1921 amounts to $4,725.53, and to approximately $7,132.74 for subsequent years.

Counsel for plaintiff here called the court's attention to the act under which this tax is levied as set out in the petition, stating that the court would take judicial notice of the act.

Witness continued: There are three pumping stations shown on the blue print, "Exhibit A," in Missouri. At Shellton, Roxdale and Yarma. The purpose of those stations is to boost the oil through the line.

Cross-examination:

Q. Where is the principal office of the Company?

A. That depends on what you call the principal office. The home [fol. 30] office is in Maryland. It is a statutory office. I have never been in the office and do not know how many rooms they have there.

Q. What sort of management or officers occupy that office?

A. The Agent for the corporation in that state. I am not familiar with his duties. I don't know of anything he has to do with the management of this corporation. I have been with the corporation since its organization, in the latter part of 1919, I believe. I am personally acquainted with this Agent who occupies the office in Maryland. I haven't the least idea about the extent of that office, whether it is one room or desk room in somebody else's office. I couldn't say whether this Agent corresponds with our office in St. Louis. He has never corresponded with my particular office. As to whether he corresponded with the other offices I couldn't say.

Q. As a matter of fact he is kept there for the purpose of service in compliance with the statute?

A. I am not familiar with his duties at all.

Q. Then you don't know much about that office in Maryland, do you?

A. No, sir. We have three or four rooms in our office in St. Louis located in the Arcade Building. We have a telephone; don't know from personal knowledge whether the number is in the directory, I think it is, I have never looked it up. I know the Company's number, it is Olive 7240. We are called there by that number by various people from various points. President of the Company is in charge, Mr. F. Godber. The other officials are the Secretary, P. R. Chenoweth, Treasurer, T. F. Lydon, and Vice-President, T. F. Lydon, and Vice President, Mr. van der Woude; that is, five officers. The Secretary is in charge of the records and books of [fol. 31] accounts. He has them in his office in the Arcade Building, St. Louis. He keeps and has in charge the stock certificate books of the Company; they are in the office in St. Louis, Missouri. I suppose any stock sold by that Company is issued from that office and a record is made thereof. Don't know from my personal knowledge about the transfer of the stock. The Secretary handles that exclusively; he keeps the stock certificate books and records. The Treasurer, naturally, I would suppose, has custody of the finance or cash of the Company. That would be my impression from the operation of the Company. The corporation maintains accounts of deposit in St. Louis. Wages are paid for St. Louis employees out of the office at St. Louis. They consist of clerical employees in the office, stenographers and clerks and bookkeepers; there are some three or four stenographers; the Company has some six or eight employees in the St. Louis office in addition to the officers. I am one of the employees. They all receive their pay at that office. I suppose the Company pays rent for the offices, it doesn't own the building. I don't know who owns it.

As to the office in Oklahoma, they have four or five rooms in a frame building, one story. It is an office building. There are no other offices in it. It is a permanent building, built on our own property. The Superintendent of operations has his office there and other employees incident to that office. I should judge there are ten or twelve employees in that office. I am not familiar with their duties. There is the Superintendent of operations, his assistants,

the master mechanic and the station employees, chief engineer, gaugers, etc. I am not familiar with just what business is carried on in the different offices. My business don't bring me in touch with that. I do not know whether the directors have any meetings [fol. 32] down there or keep any books of account, or make contracts and execute them there.

Q. In St. Louis, is that the point where the contracts are made and executed and the business directed from that point?

A. That is where the officers are. The officers maintain their offices there and carry on their duties at offices.

Q. Is the business of the Company directed from your St. Louis office; what I mean by business, the main business, the execution of the business, the transportation of petroleum?

A. I don't know about that—all I know is that the officers have their offices there. As to who directs it, or what you would call business of directing it—I don't know what you call directing the business.

I don't know whether the officers in Maryland and Oklahoma report to the St. Louis office the business they do. I am tax commissioner. That leads me to a knowledge of part of the operation of this business. We have bookkeepers in St. Louis; they keep accounts and, I suppose, the books.

It requires attention to maintain the line across the state. Repairs have to be made if anything breaks. We have occasional breaks in the line. The method of repair would depend upon the nature of the break. We send men out there to do the work. They repair the break or damage according to different methods. If the line is underground they have to remove that. I don't know where the material is gotten from that they do repairing with. I would imagine they wouldn't keep it very far distant. The line is made of ten inch steel pipe. It comes from various pipe factories outside of Missouri. We maintain track walkers or line walkers going over that line daily. One man walks it alone, takes a section. The number of miles he covers varies according to our experience in that section. The oil [fol. 33] stations are used to boost the oil through the line. The capacity of the pipe line depends on the number of stations and the distance between them. The power you put on at those stations to make or increase the amount of oil you can deliver. You must have stations along at various points. These stations build up the pressure on the line and boost it through. They are not storage tanks in any sense of the word.

Q. What is the capacity of your three stations separately?

A. The stations don't have any capacity. It is approximately eighty (80) miles between stations. The station is a building with pumps and engines in it. There is what we call a flow tank there. The oil flows in this tank and is pumped out of it.

Q. Does it immediately go through this or stored until such time as you need it to furnish additional pressure, or to lower the pressure? Is it taken out to lower?

A. They have to have a slight variance, you can't make one

set of pumps pump exactly what the other pumps bring in. I am not a mechanical engineer, that is hard for me to answer, I don't know from actual knowledge.

The first statation after entering Missouri is in Newton County, County, Shellton. We have a 37,500 barrel tank there, steel tank. I don't think the oil ever remains there. My idea of the purpose of that tank is in case we had a break beyond or East of Shellton we would have some place to switch the oil until they could shut it off at the next station beyond.

Q. You don't mean by that you don't use the tank to put oil in unless there is a break?

A. I don't know whether they do or not, but, I say, that is my idea fo rthe reason in building the tank.

[fol. 34] The pumps at Shellton are operated by engineers. I don't know how many. I have seen them. Some stations I have seen only once, some a dozen times. There are three pumps at Shellton. They run all night; I don't know what shifts of men are used. I don't know from what office the men are paid. The tank at each station is the same capacity, 37,500 barrels; same number of pumps, the same identical station except as to arrangements. We have three stations like that in Missouri. We own no real estate in St. Louis.

Q. Do you own any other real estate in Missouri aside from this pipe line?

A. The station sites. We own none disconnected from the pipe line. We own automobiles and trucks used in Missouri. Don't know the kinds and extent. Mostly Fords I know that.

We have some trucks; use them for hauling men and, I suppose, freight and material. I am fairly sure that these trucks and automobiles are maintained, that is the mechanical requirements are maintained, in Missouri and the material. Don't know how many automobiles we have. We make property returns to the various counties; they vary. I would judge there were six or eight cars and trucks altogether, not all Fords. I don't think they are expensive, big trucks; the character of the work wouldn't demand a heavy truck. They haul men and material. I know of no other property outside of the pipe line proper and automobiles in Missouri—office equipment, that is, furniture.

If damage occurs as a result of a break in line we send a claim agent out and he arrives at a settlement with the property owner if possible. We have had cases in court growing out of breaks. I don't have knowledge of any cases except in the Federal Court—yes we had a case in Springfield in the State Court in Greene [fol. 35] County. They brought the suit in the State Court. It is pending in the State Supreme Court.

We do not transport our own oil. The oil is tendered to us as a common carrier for shipment. We have regular patrons. We ship for them under tariff, so much a barrel. I am not familiar with how the oil is tendered. It is tendered at points in Oklahoma. The Company has a General Manager. I don't know how they divide the management of the Company, I mean in St. Louis. They are

the ones with whom these matters are taken up, whether by contract, or letter, or otherwise, according to my understanding. They take it and handle it in accordance with whatever arrangement is made there under tariffs prescribed. The General Manager is in St. Louis.

Q. And they, I suppose, after the fashion of any common carrier, all of which are required to file and establish their rates, I suppose the business of this is handled in much the same manner as it is to the solicitation of business or acceptance of business and the arrangements of the details and the terms and all that sort of things?

A. Under the rules of the Interstate Commerce Commission.

The office in St. Louis, where the General Manager and officers are, is the location of the headquarters where that is done.

Plaintiff here offered in evidence plaintiff's "Exhibit C," which is a certified copy of the original certificate issued by the Secretary of State of the State of Missouri to the Company dated January 9, 1910.

Robert Bascom, a witness called by the plaintiff, testified as follows:

I am General Manager of the Ozark Pipe Line Corporation. I re- [fol. 36] side in St. Louis, Missouri.

Referring to "Exhibit A," the pumping stations at Shellton, Roxdale and Yarma consist each of a pumping station building which houses the pumping units. There are three 12,000 barrel pumps directly connected to the engine which operates them. Only two of the pumps and engines are operated at one time, giving the line a capacity of 24,000 barrels per twenty-four hours. The other buildings consist of an auxiliary building which houses auxiliary equipment, that is steam heating equipment, four plant electric generators, etc., to be used in the operation of the pumping station; cottages for the employees, and one 37,500 barrel tank and a smaller tank of 1,000 barrel capacity, known as a flow tank, and there is miscellaneous pipe and connections, water supply, sewer system, and that sort of thing used in connection with the use of the houses and the operation of the station. There are three pumps at each station and we never use more than two at the same time.

I can express the capacity of one of those pumps in barrel displacement. The pump cylinders fill and discharge enough times in twenty-four hours to pump twelve thousand barrels per pump into the line. The oil comes in the pipe line from Cushing. When it reaches Shellton it flows directly to the pumps and is pumped on through the lines to the next station. The effect of the pumps is to increase the pressure from Shellton on; that is the only purpose, to add pressure to the oil in order to move it through the line. The purpose of the 1,000 barrel flow tank is this: It is impossible to so synchronize all of your pumping stations that each station will handle the amount of the station behind it and the 1,000 barrel tank does what we call "ride on the suction line" that is, if the station, [fol. 37] for instance at Shellton, pumps less than comes in from

the station behind it the oil will rise in the flow tank. If Shellton station pumps more oil than it receives back the oil will go down in the flow tank. That flow tank is used primarily to put the stations "in step" to take care of the little differences of operations between two stations and to give the dispatchers an idea of what the stations are doing so they can more accurately control the pumping. I can express it this way. If the station behind Shellton, that is at Verdi, is pumping more oil than the station at Shellton the difference will go into the flow tank. On the other hand, if the station at Shellton is pumping more oil than that at Verdi the difference is taken out of the flow tank. As the two pumping stations vary the height of the oil varies in the flow tank. The flow tank is directly connected with the pipe line at all times.

The 37,500 barrel tank is used solely in case of an emergency. If the line breaks ahead of the pumping station, or anything happens to a pumping station, we find it advisable not to shut the line down in its entirety. If the line breaks we cannot deliver crude, but from an operating standpoint you want to keep the stream in motion because particularly in the winter time, the oil becomes very viscous and cold and it is almost impossible if you once shut it down to start it again, so we keep as much of the oil in operation as possible by cutting the stream into the 37,500 barrel tank. That is, if there should be a break in the line beyond Shellton so we couldn't operate the pumping station at Shellton and pump beyond that, the oil coming in from Verdi would be shunted off into the 37,500 barrel tank until we could gat the pipe line fixed and the same is true of Roxdale and Yarma.

Q. And then after the pipe line is repaired would you connect the 37,500 barrel tank with the pipe line?

A. Well, the 37,500 barrel tank is at all times connected with the pipe line but is normally shut off by use of a valve in the line, and when we want to run the oil out of the tank, the Shellton station, [fol. 38] for instance, would be put on, would be started pumping at a higher rate than that at which the oil is coming into the station, the difference would then be drawn from the 37,500 barrel tank.

I do not know where stockholders' meetings are held. The office building in Oklahoma is located at what is known as transit station, that is about two miles South of the town of Cushing. The office is very close to the point marked "Goldsby" on Exhibit A. The line walkers are stationed along the line. They have regular homes and patrol the line both ways from that location. For instance, a man might live at Shellton station in the dormitory at that point and patrol the line, say for thirty miles East from Shellton, or he might live with a farmer along the line and patrol the line from that point on. They get their instructions from Cushing, Oklahoma. The inspectors who ride in the Ford automobiles that Mr. Baker testified about very frequently operate both in Oklahoma and Missouri across the state line. The time of employees is kept in the Cushing office and is sent to St. Louis, where the checks are prepared and the checks are mailed back to Cushing, from which point they are distributed.

The arrangements for the transportation of oil with shippers have been made wherever the business was available. I mean by that, if a shipper in Toledo or New York desires to make arrangements to ship his crude, our representatives go to see him and arrange the details; sometimes they are made in St. Louis, sometimes they are made in other places. Mr. Airey, one of the directors of the Company, resides in New York City. He has at times made contracts with shippers. He made the arrangements with the Standard Oil Company of New Jersey for the transportation of about 2,100,000 barrels of crude. [fol. 39] We have not made any contracts in their entirety at Bartlesville, Oklahoma. We have arranged part of the details of one shipment in Bartlesville with the Empire Refining Company. No contracts or details of arrangements are made in Cushing. Some are made at Tusla.

Q. Now if a man has, say 100,000 barrels of oil, he wants to ship it, we will say it is at some point along the line from Cushing to Healdton, what is the method of going about delivering that oil to you?

A. We make a connection to our tanks or tanks to which we may be connected, or we will lay the connection between our tanks and his.

He either writes a letter, or comes to see us, or we go to see him, or he calls us up over the telephone and asks what the condition of the traffic through our line is so he can find out whether he can get his crude promptly, or whether there will be a delay in the transportation.

We do not give a bill of lading; we give what is known as a run ticket, which is a receipt for the crude received. The giving of those run tickets is fixed by the act to regulate interstate commerce, which provides that the shipper shall either give a receipt or a run ticket, a receipt or a bill of lading. Those receipts are made out and given to the shipper at Cushing. The shipper will find out by telephone or in some way the condition of the line and our ability to handle it. When he gets our answer it can be handled on a certain date and time he makes a tender along the line and gets a receipt for it. He gets a receipt as he delivers it. If he gives us 5,000 barrels one time we give him receipt for such amount. If he gives us 10,000 barrels the next day we receipt him for 10,000. He does not get any written contract from us in St. Louis at all.

[fol. 40] The automobiles and trucks used at the stations are for the purpose of hauling supplies from the towns, from the nearest railroad point, to the station and used somewhat in the maintainance of the line. Other trucks are used entirely in the maintainance of the line, to haul the men from the town where they have to live out to the pipe line along the right of way where they do the maintainance work. The Company never handles any oil delivered to it in Missouri. It never makes deliveries in Missouri. Its business is confined entirely to the transportation of oil from what is known as the Mid-continent field in Oklahoma up to Woodriver, Illinois.

Cross-examination:

I am General Manager of the Ozark Pipe Line Corporation. I am not a stockholder or director.

The revenue is collected at St. Louis. We keep the books of account in St. Louis of all the transportation the we do. The books of record, such as stock certificates and records of stockholders' meetings and things of that sort, are kept by the Secretary's office and I have no knowledge of whether the books are kept in St. Louis or not. The Secretary's office is in the Arcade Building at St. Louis. I have never seen the stock certificate records there, but I know he keeps those records there.

Pipe line, pumping stations, automobiles, telephone and telegraph lines are the only things which we have in the State of Missouri. We transmit telegrams over this telephone line, both telephone and telegraph. It is maintained along the right of way. We employ men to run the trucks.

Q. And you purchase supplies and material to maintain your trucks, locally, do you not?

[fol 41] A. Well, sometimes, for emergency repairs purchases are made locally. We keep at Cushing a supply of such things as tires and other miscellaneous repair parts which frequently wear out, and in that case there is no local purchase made but a requisition is sent to the Cushing office for the material and supplies from the warehouse at that point.

Q. Mechanical work required on the trucks and automobiles, where is that done, locally?

A. Sometimes when the work is of such a character it can be done by our mechanics, otherwise it is sent to a garage at the nearest town, or sent into Oklahoma to some garage with which we have arrangements to do our work.

I do not say that we send trucks and automobiles from up here in Northeast Missouri and East Missouri to Oklahoma to have them repaired. We maintain trucks and automobiles in Central and Eastern Missouri as well as in Oklahoma. The supplies are secured and repairs made wherever it is most convenient. If it is in a town or close to one, they are sent to the local garage. However, generally the repair parts come from the dealers in St. Louis, from the agencies. We do not purchase gasoline and cylinder oil and things of that sort locally. We contract and it is shipped from different distributing agencies from the people from whom we buy the gasoline and lubricating oils. We do send our cars to local garages and have them repaired there if it is convenient. It depends on the character of the work our trucks do—while in general they stay in the same division of the pipe line. If a truck has to be overhauled we send out a truck to replace it and send the crippled truck to a garage. Now that may be in Oklahoma or Missouri, it entirely depends on the condition of the truck, whether it can be driven, or whether the repairs need to [fol. 42] be made immediately, or whether they can wait; it depends on the circumstances entirely. It does not depend on the nearness

to the Oklahoma line necessarily. If the truck is in such condition it can be operated; I don't mean it necessarily has to go into Oklahoma, we might send it to St. Louis or over to Illinois. We have no fixed practice, it is a matter of convenience.

The line walkers and repair men do not live at the stations. The pay checks are made in the St. Louis office upon time sheets kept in Cushing.

Q. And all the pay checks are made out of St. Louis and distributed from St. Louis?

A. Yes, sir.

Telephone or telegraph poles are purchased through the St. Louis office. I don't think they come from Missouri. We use what is known as Northern White Cedar, it grows up around the Lakes and Wisconsin.

I am not acquainted with the requirements of the Maryland franchise tax law. I don't know anything about what the Company does with reference to payment of franchise tax in Maryland. I think we hold record meetings in the St. Louis office if it is convenient: I have seen all the directors there. I don't know from my own personal knowledge or perusal of the records. I don't know whether they hold more meetings there than at any other point. I don't know who the directors are—what officers are directors, I couldn't tell you. I know who the President is, he lives in St. Louis. There are three Vice-Presidents, I believe, two in St. Louis and one in New York. Those that live in St. Louis maintain their office there in the Arcade Building. The Secretary and Treasurer maintains his office there.

[fol. 43] Examination by the court:

We have never exercised the right of eminent domain in Missouri.

Q. Do you regard it as probable or possible that you may have to and desire to exercise that right?

A. Yes, Sir; I do, sir.

Q. Now how would that be occasioned, what would be the reason or necessity of that?

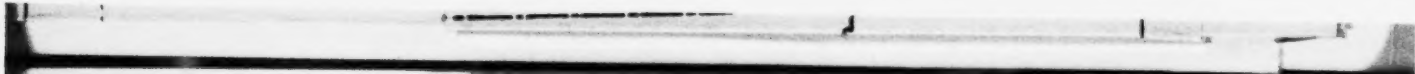
A. Well, our pipe line at present occupies a particular place in the State of Missouri. Now if we should desire for any reason to change the location of a part of that line we might experience considerable difficulty in accomplishing that without the right of eminent domain. In other words, we would be entirely at the mercy of the property owners on either side of it.

Q. You might want to construct laterals or something of that sort?

A. Well, suppose an accident should happen to our line, or they should open up part of the country in subdivisions, put us in a public road at a point we didn't want to occupy and we would then be desirous of moving our line from that location to a location which we would consider safe.

Q. And for that reason you desire to keep alive your right to exercise it if you wish to?

A. Yes, sir.



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Q. You, I understand, are the General Manager of the Company?
A. Yes, sir.
Q. And as such you have general supervision and direction of the affairs of the Company wherever its business is located and wherever its property is located?
[fol. 44] A. Let's qualify that, let's say operate—the policy of the Company and things of that sort are controlled by the officers.
Q. And Board of Directors, but under that policy, so far as the administrative and executive part of it is concerned, you are the one that carries that out and directs it?
A. Yes, sir.
Q. If there is any arrangement to be made for the handling of the product in any considerable amount and all that sort of thing, you are the one who directs that, approves it or passes upon it?
A. Yes, sir.

Mr. CARL BAKER, recalled, further testi*mony* in behalf of the plaintiff as follows:

The present Directors of the Company are Mr. F. Godber, St. Louis, Mr. T. F. Lydon, St. Louis, Mr. R. G. A. van der Woude, St. Louis, and Mr. Richard Airey of New York City. There are none in Maryland.

Plaintiff here offered in evidence plaintiff's Exhibit D, being a copy of the Articles of Association of the Ozark Pipe Line Corporation.

Here plaintiff rested its case.

The defendants thereupon offered the following testimony:
Defendants here offered defendant's Exhibit 1, being the application of the Company for permission to do business in Missouri.
Defendants here offered in evidence defendants' Exhibit 2, being a copy of plaintiff's application for permission to do business after an increase in capital stock.
Defendants here rested their case.

[fol. 45] IN UNITED STATES DISTRICT COURT

ORDER APPROVING ABSTRACT

Upon filing the Exhibits referred to by the Assistant Attorney General, this abstract is approved this 30th day of June, 1923.
Arba S. Van Valkenburgh, Judge.

(Here follows Plaintiff's Exhibit A, marked side folio page 46.)

[fol. 47] EVIDENCE: PLAINTIFF'S EXHIBIT B

State of Missouri, Department of State

Whereas, on the eighteenth day of August, Nineteen Hundred and 21 there was filed in the office of the Secretary of State, as required by law, a duly certified copy of the statement of the proceedings of a meeting held for the purpose of increasing the capital stock of Ozark Pipe Line Corporation, a corporation organized under the laws of the State of Maryland and licensed under the laws of the State of Missouri, on the 9th day of January 1920 and said corporation having in all things, complied with the law made and provided for the increase of capital stock and increased its capital stock from Five Million Three Hundred Nineteen Thousand Two Hundred and One and 90/100 Dollars to Twelve Million Seven Hundred Twenty Thousand Dollars,

Now, therefore, I, Charles U. Becker, Secretary of State of the State of Missouri, in virtue and by authority of law, do hereby certify that the capital stock in Missouri of said corporation is increased and that the amount of the capital stock in Missouri of said Ozark Pipe Line Corporation is Twelve Million Seven Hundred Twenty Thousand Dollars.

[fol. 48] In testimony whereof, I hereunto set my hand and affix the great seal of the State of Missouri. Done at the City of Jefferson, this 18 day of August, A. D., Nineteen Hundred and Twenty-One.

Charles U. Becker, Secretary of State. C. E. Stephens, Chief Clerk. (Seal.)

[File endorsement omitted.]

[fol. 49] EVIDENCE: PLAINTIFF'S EXHIBIT C

No. 3430

The State of Missouri

Certificate and License

Whereas, Ozark Pipe Line Corporation incorporated under the laws of the State of Maryland has filed in the office of the Secretary of State, duly authenticated evidence of its incorporation, as provided by law, and has, in all respects, complied with the requirements of law governing Foreign Private Corporations;

Now therefore, I, John L. Sullivan, Secretary of State of the State of Missouri, in virtue and by authority of law, do hereby certify that said Ozark Pipe Line Corporation is from the date hereof duly authorized and licensed to engage in the State of Missouri, exclu-

sively in the business of transporting crude petroleum by pipe line which is authorized by its charter for a term ending October 7th 1969, and is entitled to all the rights and privileges granted to Foreign Corporations under the laws of this State; that the amount of the capital stock of said corporation is Ten Million Four Hundred Thousand Dollars, and the amount of said capital stock represented by its property located and business transacted in the State of Missouri [fol. 50] is Five Million Three Hundred Nineteen Thousand Two Hundred One and Ninety One Hundredths Dollars, and that its public office for the transaction of business in Missouri, is located at St. Louis.

In testimony whereof, I hereunto set my hand and cause to be affixed the great seal of the State of Missouri. Done at the City of Jefferson, this 9th day of January, A. D. Nineteen Hundred and Twenty.

John L. Sullivan, Secretary of State. (Seal.)

[fol. 51] EVIDENCE: PLAINTIFF'S EXHIBIT D

Ozark Pipe Line Corporation

Incorporated under the Laws of the State of Maryland

Certificate of Incorporation as Filed October 7, 1919, and Amended 23rd day of October, 1920

[fol. 52] Certificate of Incorporation of "Ozark Pipe Line Corporation"

This is to certify:

A. That we, the subscribers hereto, James Piper, Francis J. Carey, and D. List Warner, all of whom reside in the City of Baltimore and State of Maryland, and whose postoffice address is 607 Calvert Building, 101 East Fayette Street, Baltimore, Maryland, and all of whom are of full legal age, do hereby associate ourselves together with the intention of forming a corporation under and by virtue of the General Laws of the State of Maryland, authorizing the formation of corporations.

B. That the name of the proposed corporation is Ozark Pipe Line Corporation.

C. That the purpose for which the corporation is formed and the business or objects to be carried on and promoted by it are as follows:

(1) To engage in and carry on the business of constructing, purchasing, leasing or otherwise acquiring, and holding, owning, improving, developing, managing, maintaining, controlling, operating, mortgaging, creating liens upon, selling, conveying, or otherwise

disposing of pipe lines, transmission lines and any and all othe
[fol. 53] means of carriage and transportation located entirely out
side of the State of Maryland, together with pumping station
terminals, storage plants, and all other appurtenances incidental t
the transportation as a private or a public service of petroleum, min
eral oil, natural gas, coal and other oils, minerals and mineral an
hydro carbon substances of every kind and all kinds of product
and by-products derived from said substances or any of them.

(2) To engage in and carry on the business of constructing, pur
chasing, leasing or otherwise acquiring and holding and owning o
improving, developing, managing, maintaining, controlling, oper
ating, mortgaging, creating liens upon, selling, conveying, or other
wise disposing of telegraph and telephone lines, located entirely out
side the State of Maryland, with all rights, privileges, franchise
appertaining thereto.

(3) To engage in, and carry on the business of drilling, borin
and exploring for, mining, extracting, producing, refining, distilling
treating, manufacturing, piping, dealing in, buying, and selling pe
troleum, mineral oils, natural gas, coal and other oils, minerals an
mineral and hydro carbon substances of every kind and all kind
of products and by-products derived from said substances or any o
them and all implements, materials and things incidental to or use
ful in connection with any of the businesses of the corporation an
generally all kinds of goods, wares and merchandise of every natur
whatsoever and of transporting and transmitting the same in an
manner whatsoever and to engage in and carry on any other busines
[fol. 54] which may conveniently be conducted in conjunction wit
any of the businesses aforesaid.

(4) To purchase, lease, hire, otherwise acquire, hold, own, de
velop, improve and dispose of, and to aid and subscribe for the ac
quisition, development or improvement of real and personal property
and rights and privileges therein, suitable or convenient for any o
the businesses of the corporation and to acquire, take, hold, own
construct, erect, improve, manage and operate, and to aid and sub
scribe for the acquisition, construction, or improvement of oil wells
gas wells, mines, refineries, manufacturing plants, pipe lines, tanks
cars, piers, wharfs, steam and other vessels for water transportation
and any other works, property or appliances which may appertain
to or be useful in the conduct of any of the businesses of the cor
poration.

(5) To apply for, obtain, purchase or otherwise acquire any
patents, copyrights, licenses, trademarks, tradenames, rights, pro
cesses, formulas, and the like which may seem capable of being used
for any of the purposes of the corporation, and to use, exercise, de
velop, grant liens in respect of, sell, and otherwise turn to account
the same.

(6) To engage in any manufacturing, mining, construction
transportation, storage, or other business connected with any of the
purposes herein stated.

(7) To borrow or raise monies for any of the purposes of the corporation, issue bonds, debentures, notes or other obligations of any nature, and in any manner permitted by law, for money so borrowed or in payment for property purchases, and to secure the pay-
[fol. 55] ment thereof and of the interest thereon, by mortgaging upon, or pledge, or conveyance, or assignment, in trust of, the whole or any part of the property of the corporation, real or personal, including contract rights, whether at the time owned or thereafter acquired; and to sell, pledge, discount, or otherwise dispose of such bonds, notes or other obligations, of the corporation for its corporate purposes.

(8) To acquire by purchase, subscription or otherwise, and to hold, sell, assign, transfer, exchange, lease, mortgage, pledge, or otherwise dispose of any shares of the capital stock of, or voting trust certificates for, any shares of the capital stock or any bonds, or other securities or evidences of indebtedness, issued or created by any other corporation or association organized under the laws of the State of Maryland or of any other State, Territory, District, Colony or Dependency of the United States of America, or of any foreign country, and to issue in exchange therefor shares of capital stock, bonds, or other obligations of this corporation in the manner permitted by law and while the owner or holder of any such shares of capital stock voting trust certificates, bonds or other obligations, to possess and exercise in respect thereof, any and all the rights, powers and privileges of individual holders including the right to vote on any shares of stock so held or owned and upon a distribution of the assets and a division of the profits of this corporation, to distribute any such shares of the capital stock voting trust certificates, bonds or other obligations, or the proceeds thereof among the stockholders of this corporation.

[fol. 56] (9) To aid in any manner, any corporation or association, any bonds of other securities or evidences of indebtedness of which or shares of stock in which are held by or for this corporation or in which or in the welfare of which this corporation shall have any interest and to do any act or things designed to protect, preserve, improve or enhance the value of any such bonds, or other securities of indebtedness or such shares of stock or any other property of this corporation.

(10) To guarantee the payment of dividends upon any shares of the capital stock of, or the performance of any contract by any other corporation or association in which this corporation has an interest and to endorse and otherwise guarantee the payment of the principal and interest or either of any bonds, debentures, notes, securities or other evidences of indebtedness, created or issued by any such other corporation or association.

(11) To carry out all or any of the aforegoing objects as principal, factor, agent, contractor, or otherwise, either alone or through, or in conjunction with any person, firm, association or corporation, and in any part of the world; and in carrying on its business and for the

purpose of attaining or furthering any of its objects and purposes to make and perform any contracts, and to do any acts or things and to exercise any powers suitable, convenient or proper for the accomplishment of any of the purposes herein enumerated, or incidental to the powers herein specified, or which at any time may appear conducive to or expedient for the accomplishment of any of [fol. 57] such porposes, if not inconsistent with the laws of the State of Maryland.

(12) Except as herein otherwise specifically provided to carry out all or any part of the aforesaid purposes and to conduct its business in all or any of its branches, in any or all States, Territories, Districts, Colonies and Dependencies of the United States of America, and in foreign countries, and to acquire (by purchase, exchange, lease, hire, or otherwise) own, hold, develop, operate, sell, assign, transfer, exchange, mortgage, pledge, or otherwise dispose of, or turn to account and convey real and personal property, and rights and privileges therein and to maintain offices and agencies in any or all States, Territories, Districts, Colonies and Dependencies of the United States of America and in foreign countries.

It is the intention that the objects and purposes specified in the foregoing clauses of this Article C shall not, unless otherwise specified herein, be in anywise limited or restricted by reference to or inference from, terms of any other clause of this or any other article of this Certificate, but that the objects and purposes specified in each of the clauses of this Article shall be regarded as independent objects and purposes.

It is also the intention that said clauses be construed both purposes and powers; and generally that the corporation shall be authorized to exercise and enjoy all other powers, rights, and privileges granted to or conferred upon corporations of this character by the laws of the State of Maryland, and the enumeration of certain powers as herein specified is not intended as exclusive of or as a waiver of [fol. 58] any of the powers, rights or privileges granted or conferred by the laws of such state, nor or hereafter in force; provided, however, that the corporation shall not have the power to carry on, and it is hereby prohibited from carrying on, the business of constructing, maintaining, and/or operating properties, lines, and/or works, and/or transacting any other business whatsoever within the State of Maryland, the constructing, maintenance, operation, and/or transaction of which would disentitle it to be classified as an ordinary business corporation under the laws of Maryland; nor shall it carry on in any State, Territory, District or Country, any business, or exercise any powers, which a corporation organized under the laws of said State, Territory, District, or Country, could not carry on or exercise, except to the extent permitted or authorized by the laws of such State, Territory, District or Country.

D. That the postoffice address of the place at which the principal office of the corporation in the State of Maryland, will be located *in* Calvert Building, 101 East Fayette Street, Baltimore, Maryland;

that the name and postoffice address of the resident agent is J. Bannister Hall, Jr., Calvert Buliding, 101 East Fayette Street, Baltimore, Maryland, and that said resident agent is a citizen of the State of Maryland and actually resides therein.

(E) That the total amount of capital stock of the proposed corporation is Ten Million Four Hundred Thousand Dollars ($10,400,000.00), consisting of One Hundred Thousand (100,000) shares of preferred stock of the par value of One Hundred Dollars ($100.00) [fol. 59] each. The amount of the total authorized preferred stock being Ten Million Dollars ($10,000,000.00) and Two Hundred Thousand Shares (200,000) common stock of the par value of Two Dollars ($2.00), the amount of the total authorized stock being four hundred thousand dollars.

The following description of the preferred stock and the common stock, with the terms of which the respective classes of stock are created and of the designations, preferences, voting powers, restrictions and qualifications of each of said classes of stock:

(1) Out of the surplus of the corporation or the net profits arising from its business, the holders of preferred stock shall be entitled to receive dividends at the rate of, but not exceeding, seven per centum per annum, payable semi-annually on the first day of April, and the first day of October in each year, from October 1st, 1919, or if so determined by the Board of Directors and expressed in the Certificates therefor from the first day of April, or the first day of October, next preceding the date of issue, unless such stock shall be issued on one of said dates and in such case from the date of issue before any dividends shall be declared or paid upon or set apart for the common stock; and such dividends shall be cumulative so that if in any dividend period full dividends upon the outstanding preferred stock at the rate of seven per cent per annum shall not have been paid, the deficiency shall be paid before any dividends shall be declared or paid upon or set apart for the common stock.

(2) Out of any surplus of the corporation or net profits arising from its business, remaining after full cumulative dividends, as afore- [fol. 60] said, upon the preferred stock shall have been paid for, all past semi-annual dividend periods and full dividends upon the preferred stock for the current semi-annual dividend period shall have been declared and paid and set apart for payment, then and not otherwise dividends may be declared upon the common stock, and in the event of the declaration of any such dividends the holders of the common stock shall be entitled to the exclusion of the holders of the preferred stock to share ratably therein.

(3) The corporation may at its option from time to time on any semi-annual dividend payment date redeem the whole or any part of the preferred stock at the par value thereof, plus dividends accrued or in arrears. Each redemption of preferred stock shall be upon not less than thirty days' notice given in such manner as shall

from time to time be provided in the by-laws of the corporation, or be determined by resolution of the Board of Directors, and such redemption shall be in such amount and at such time and place, and by such method whether by lot or pro rata, as shall from time to time be provided by the by-laws of the corporation, or be determined by resolution of the Board of Directors. From and after the date fixed for any such notice as the date of redemption unless default shall be made by the corporation in the payment of the redemption price in pursuance of such notice, all dividends on the preferred stock thereby called for redemption shall cease to accrue and all rights of the hloders thereof as stockholders of the corporation except the right to receive the redemption price shall cease and determine.

[fol. 61] (4) Preferred stock shall be preferred as to both earnings and assets and in the event of any liquidation or dissolution or winding up of the corporation, the holders of the preferred stock shall be entitled before any distribution of the assets shall be made to the holders of the common stock to receive the par amount of their respective holdings of preferred stock, together with all dividends accrued or in arrears thereon; and the holders of the common stock shall be entitled to the exclusion of the holders of preferred stock to share ratably in all the assets of the corporation then remaining. In case of reduction of the capital stock of the corporation, the whole of the preferred stock shall be redeemed as hereinbefore provided, before any distribution of assets theretofore capitalized shall be capitalized shall be made to the holders of the common stock. If, upon any such liquidation, dissolution or winding up of the corporation, or reduction of its capital stock, the assets thus distributable among the holders of the preferred stock shall be insufficient to permit the payment of the preferred stockholders of the preferential amount aforesaid, then the entire assets of the corporation to be distributed shall be distributed ratably among the holders of the preferred stock. The terms "dividends accrued or in arrears," and "full cumulative dividends," whenever used in this certificate with reference to preferred stock, shall be deemed to mean that amount which shall be equal to seven per cent per annum upon the par value thereof from October 1st, 1919, (or in case of stock dividends on which are expressed to be payable from another date from the date so expressed) to the date of distribution or the date fixed for redemption, as the case may be, [fol. 62] less the aggregate amount of all dividends which shall have been paid upon said stock prior to the date of such distribution or redemption.

(5) Except as may be otherwise required by the laws of the State of Maryland and as hereinafter in this certificate otherwise provided, the holders of common stock shall exclusively possess voting power for the election of directors and for all other purposes and the holders of the preferred stock shall have no voting power whatsoever; provided that in case the corporation shall be in default in the payment of any four successive semi-annual dividends upon the preferred stock, then, and in every such case, so long as there shall be any arrears of dividends upon the preferred stock, the holders of preferred

stock shall exclusively possess voting power for the election of directors and for all other purposes, and the holders of the common stock shall have no voting power for the election of directors and for all other purposes, and the holders of the common stock shall have no voting power. If, however, subsequent to any such failure in respect to the declaration and payment of four successive semi-annual dividends on the preferred stock all such accrued installments and arrears of dividends shall be paid by the corporation at any time, then and thereupon all power of the holders of the preferred stock to vote for the election of directors and for all other purposes shall cease; subject, however, to be again revived whenever the corporation shall be in default in the payment of four successive semi-annual dividends upon the preferred stock. At all times each holder of stock of the corporation of any class which shall at the [fol. 63] time *possessed* voting power on any matter, shall be entitled to one vote on such matter for each share of stock of such class then standing in his name on the books of the corporation.

F. That the corporation shall have three Directors. The names of those who shall act as directors until the first annual meeting or until their successors are duly chosen and qualified are: Avery D. Andrew, W. V. Waterschoot, van der Gracht, and Richard Airey.

G. The following provisions are hereby adopted for the purposes of defining, limiting and regulating the powers of the corporation, and of the directors and stockholders:

(1) The Board of Directors shall have power from time to time to fix and determine and to vary the amount of working capital of the corporation: to determine whether any and if any, what part of the surplus of the corporation or of the net profits arising from its business, shall be declared in dividends and paid to the stockholders, subject, however, to the provisions of this certificate; and to direct and determine the use and disposition of any of such surplus or net profits. The Board of Directors in its discretion, — use and apply, any of such surplus or net profits in purchasing or acquiring any of the shares of the capital stock of the corporation, if thereunto authorized in the manner provided by law, or any of its bonds or other evidences of indebtedness to such extent and in such manner and upon such terms as the Board of Directors deem expedient; and the shares of such capital stock so purchased or acquired may be resold unless [fol. 64] such shares shall have been retired for the purpose of decreasing the capital stock of the corporation to the extent authorized by law.

(2) The Board of Directors shall have power, if authorized by the stockholders or by the by-laws by a resolution passed by a majority of the whole Board, to designate two or more of their number to constitute an executive committee, and to delegate said committee any or all of the power of the Board of Directors in the management of the business and affairs of the corporation, including the power to authorize the seal of the corporation to be affixed to all papers which may require it.

(3) Unless otherwise provided by the by-laws of the corporation the Directors of the Corporation need not be stockholders therein.

(4) Unless otherwise provided by statute or provided by the by-laws of the corporation, notice of the time and place of any annual or special meeting of the stockholders of the corporation shall be sufficiently given if a written or printed notice thereof shall, at least twenty days before the date on which such meeting is to be held, be given to each holder of record of stock of the corporation entitled to vote at such meeting by leaving the same with him or at his residence or usual place of business, or by mailing it postage prepaid, and addressed to him at his address as it appears upon the books of the corporation, and no publication of any such notice shall be necessary.

[fol. 65] (5) The corporation may from time to time in the manner permitted by law, issue and sell any of the shares of its capital stock to the amount authorized by this certificate, or in case of any increase in the amount of the authorized capital stock of the corporation, then to the amount authorized by such increase and of any class which may at the time be authorized for such consideration or considerations in money or in property as from time to time may be affixed by the corporation, and the consideration so fixed for any shares of any class having a par value may be either greater or less than their par value. No holders of stock of the corporation of whatever class shall have any preferential rights of subscription to any shares of any class so issued or sold or to any obligations convertible into stock of the corporation, nor any right of subscription to any thereof other than such, if any, as the Board of Directors in its discretion may determine, and such price (which may be greater or less than the par value thereof of any) as the Board of Directors in its discretion may fix; and any shares or convertible obligations which the Board of Directors may determine may offer for subscription to the holders of stock, may, as said Beard may determine, be offered to holders of any class or classes of stock at the time existing to the exclusion of holders of any or all other classes at the time existing.

(6) Subject to the laws of Maryland, the corporation may at any time, if authorized by vote of the holders of two-thirds in amount of each class of stock at the time outstanding, given at a meeting of the stockholders called for the purpose, sell, lease or exchange all [fol. 66] of its property and assets for such consideration or considerations, whether in money or in property (including stocks, bonds or other evidences of indebtedness) of any other corporation or association organized under the laws of the State of Maryland, or of any other State, Territory or Country, as may be authorized by such vote.

(7) All certificates for shares of the capital stock of the corporation which shall be issued by it shall contain a reference to and be subject to all of the terms, conditions and limitations, of the certificate of incorporation and by-laws of the corporation. The holders

of any such shares, by accepting any such certificates, either before or after the purchase, by the corporation of any property and the transfer thereof to the corporation or the execution and delivery of any contract, shall conclusively be deemed and held to have consented to such purchase and transfer *or* such contract and to have agreed that all shares of the capital stock of the corporation issued in payment for such transfer of property or such contract shall be or where, when issued, fully paid by such transfer or the execution and delivery of such contracts and not liable to any further call or *sentence* whatsoever; provided, however, that all requirements of the laws of the State of Maryland, in reference to the issuance of said shares of stock shall have been complied with.

(8) No contract or other transaction between this corporation and any other corporation, and no act of this corporation shall in any way be affected or invalidated, by the fact that any of the directors of [fol. 67] this corporation are pecuniarily or otherwise interested in or are directors or officers of such other corporation; any director, individually, or any firm of which director may be a member, may be a party to or may be pecuniarily or otherwis interested in any contract or transaction of this corporation, provided that the fact that he or such firm is so interested shall be disclosed or shall have been known to the Board of Directors or a majority thereof; and any director of this corporation, who is also a director or officer of such other corporation, or who is so interested, may be counted in determining the existence of a quorum at any meeting of the Board of Directors of this corporation, which shall authorize any such contract or transaction and may vote thereat to authorize any such contract or transaction with like force and effect as if he were not such director or officer of such other corporation or not so interested.

In witnesee whereof, we have hereunto set out hands this 7th day of October, 1919.

James Piper, Francis J. Carey, D. List Warner. In the presence of: Emma L. Burke.

[fol. 68] STATE OF MARYLAND,
City of Baltimore, ss:

Before the subscriber, a Notary Public of the State of Maryland, in and for Baltimore City, personally appeared James Piper, Francis J. Carey and D. List Warner, and they did severally acknowledge the foregoing certificate to be their respective acts.

Witness my hand and Notarial Seal this 7th day of October, 1919.

Emma L. Burke, Notary Public. (Notarial Seal.)

Charter of "Ozark Pipe Line Corporation." Approved as in conformity with law and received for record by the State Tax Commission on the 7th day of October, 1919, 2:45 P. M., and recorded in Liber No. 18, Folio 51, etc., one of the Charter Records of the Commission.

Oscar Leser, William W. Beck.

It is hereby Certified, That the within instrument is a true copy, as received, approved and recorded by the State Tax Commission of Maryland.

As Witness my hand and the seal of the said Commission at Baltimore this 23rd day of May, 1922.

C. C. Wallace, Secretary. (Seal State Tax Commission of Maryland.)

[fol. 69] Ozark Pipe Line Corporation

Articles of Amendment

This is to certify:

First. That the Board of Directors of the "Ozark Pipe Line Corporation," a Maryland Corporation having its principal office in the City of Baltimore, Maryland, at a meeting duly called and held on October 23rd, 1920, adopted the following resolution:

Resolved, (1) That it is advisable to amend the charter of the corporation by striking out the first paragraph, Section "E," of the Certificate of Incorporation, and inserting in lieu thereof the following:

"E." That the total amount of the capital stock of the corporation is Thirty Million Dollars ($30,000,000.00), consisting of One Hundred Thousand (100,000) shares of preferred stock of the par value of One Hundred Dollars ($100.00) each, the amount of the total authorized preferred stock being Ten Million Dollars ($10,000,000.00), and Two Hundred Thousand (200,000) shares of common stock of the par value of One Hundred Dollars ($100.00) each, the amount of the total authorized common stock being Twenty Million Dollars ($20,000,000.00).

(2) That a meeting of the stockholders of the corporation to take action upon the adoption of the amendment advised, as foresaid, be and the same is hereby called to convene at Baltimore, Maryland, on November 15th, 1920, at 10:00 A. M., or such earlier date as the stockholders of the corporation may fix by consent and waiver [fol. 70] of notice signed by all of the stockholders, and that the secretary of this corporation be and he hereby is instructed to give notice of said meeting as prescribed by the laws of Maryland, unless such notice shall be waived in writing by all the stockholders of this corporation.

Second. That the meeting of the stockholders of the corporation, called by the Board of Directors of the corporation, as aforesaid, was held on October 26th, 1920, pursuant to written waiver of notice, duly given and filed with the records of the corporation, and at said meeting the stockholders, by the affirmative vote of two thirds (2/3) of the shares of each class of stock outstanding and entitled

to vote, duly adopted the amendment of the charter of the corporation advised by the Board of Directors, as aforesaid.

Third. (a) That the amount of stock heretofore authorized is Ten Million Four Hundred Thousand Dollars ($10,400,000.00), of which Ten Million Dollars ($10,000,000.00) or One Hundred Thousand shares (100,000) of the par value of One Hundred Dollars ($100.00) each, is preferred stock and Four Hundred Thousand Dollars ($400,000.00), or Two Hundred Thousand Shares (200,000) of the par value of Two Dollars ($2.00) each, is common stock, and that Eigthy-five Thousand One Hundred Sixty-one shares (85,161) of the preferred stock and Two Hundred Thousand shares (200,000) of the common stock are outstanding.

(b) That the amount of additional stock hereby authorized is One Hundred Ninety-six Thousand (196,000) shares of common stock of the par value of One Hundred Dollars $100.00) each, [fol. 71] aggregating Nineteen Million Six Hundred Thousand Dollars ($19,600,000.00).

(c) That the preferences, voting powers, restrictions and qualifications of the authorized preferred stock and of the newly authorized common stock are at set forth in the charter in respect of the preferred stock and the common stock heretofore authorized.

In witness whereof, The "Ozark Pipe Line Corporation" has caused these presents to be signed in its name by its President and its corporate seal heretofore affixed and attested by its Secretary, on October 26th, 1020.

Ozark Pipe Line Corporation, By W. Van Waterschoot, v. d. Gracht, President. Attested: T. F. Lydon, Secretary. (Corporate Seal.)

[fol. 72] STATE OF MISSOURI,
City of St. Louis, ss:

This is to certify that on October 26th, 1920, before me, the subscriber, a Notary Public of the State of Missouri, in and for the City of St. Louis, aforesaid, personally appeared W. V. Waterschoot, v. d. Gratch, who for the Ozark Pipe Line Corporation, a body corporate, and in its name and on its behalf did as President of said corporation acknowledge the foregoing instrument to be his act and an amendment to its Certificate of Incorporation.

In Witness Whereof, I have hereunto set my hand and Notarial Seal on the day and date last above written.

My commission expires August 25th, 1922.

Wm. F. Fahey, Notary Public. (Notarial Seal.)

[fol. 73] STATE OF MARYLAND,
City of Baltimore, ss:

This is to certify, That on the 28th day of October, 1920, before me, the subscriber, a Notary Public of the State of Maryland, in

and for the City of Baltimore, aforesaid, personally appeared D. List Warner, who being first duly sworn, made oath as follows:

That he was Secretary of the meeting of stockholders of the corporation at which the amendment of the charter of the corporation set forth in said Articles of Amendment was adopted, and that the matters and facts set forth in said Articles of Amendment are true.

Witness by hand and Notarial Seal the day and year last above written.

My Commission expires May —, 1922.

Cora E. Schotta, Notary Public. (Notarial Seal.)

Articles of Amendment of "Ozark Pipe Line Corporation." Approved by the State Tax Commission of Maryland, October 28th, 1920, as in conformity with law and order recorded.

Oscar Leser, Wm. W. Beck, Commissioners.

It is hereby certified, that the within instrument is a true copy as received, approved and recorded by the State Tax Commission of Maryland.

As witness my hand and the seal of said Commission at Baltimore this 22nd day of May, 1922.

C. C. Wallace, Secretary. (Seal State Tax Commission, Maryland.)

[fol. 74] EVIDENCE: PLAINTIFF'S EXHIBIT 1

Copy

STATE OF MISSOURI,
City of St. Louis, ss:

T. F. Lydon, principal officer in Missouri of the Ozark Pipe Line Corporation, a corporation duly incorporated under the laws of the State of Maryland on the 7th day of October 1919, for a term of perpetual existence, being duly sworn, on his oath, states that he represents said corporation as its principle agent in the State of Missouri; that the amount of the capital stock of said corporation is $10,400,000.00 and the proportion of the capital stock of said corporation which is represented by its property located and business transacted in the State of Missouri is $5,319,201.90. Capital stock employed in Missouri is represented by property, an itemized description of which, with cash value thereof, is as follows:

One, 10 inch steel pipe line, together with telegraph and telephone line and other property used in connection with the transportation of crude oil, which said pipe line extends from Missouri, Oklahoma State line through the State of Missouri to a point on the Mississippi River in St. Louis County, North of the City of St. Louis, Missouri, $5,319,201.90.

That the principal office of said corporation or place of transaction of its business in the State of Missouri where legal service may be obtained upon it, is located on the 4th floor of the Arcade Building, 8th and Olive Sts., St. Louis, Missouri.

(Signed) T. F. Lydon.

Subscribed and sworn to before me this 5th day of January, 1920. My commission expires June 7th, 1923. Carl Barker, Notary Public. (Seal.)

[fol. 75] EVIDENCE: DEFENDANTS' EXHIBIT 2

Affidavit of Assistant Secretary of the Ozark Pipe Line Corporation in Connection with Filing Amendment Showing Increase in Capital Stock of said Corporation in Missouri

P. R. Chenoweth, being duly sworn, on his oath, states that he is Assistant Secretary of the Ozark Pipe Line Corporation a Maryland corporation, and that he is Assistant to T. F. Lydon, principal officer of said corporation in the State of Missouri and that the per cent of property and business of said Ozark Pipe Line corporation in the State of Missouri is Forty-two and Four-tenths Per Cent (42.4); that the present total authorized capital stock of said corporation is $30,000,000.00; that the amount of property and business of said corporation in the State of Missouri is $12,720,000.00, that said corporation has previously qualified in the State of Missouri for $5,319,201.91, and that $7,400,798.09; in addition thereto is now represented in the State of Missouri. Further affiant sayeth not.

P. R. Chenoweth, Affiant.

Subscribed and sworn to before me this 17th day of August 1921. Chas. Alderson, Notary Public. My commission expires Sept. 8th, 1923.

[fol. 76] And afterwards, to-wit, on March 12, 1923, the following proceedings were had in said cause, to-wit:

[Title omitted]

Now on this day is filed the Memorandum on Final Hearing by the Court.

Said Memorandum on Final Hearing is in words and figures as follows, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE CENTRAL DIVISION OF THE WESTERN DISTRICT OF MISSOURI

[Title omitted]

MEMORANDUM ON FINAL HEARING—Filed March 12, 1923

The method of computation adopted for the ascertainment of that amount of the capital of a foreign corporation doing business both within and without the state subject to the payment of an excise tax for the privilege of doing business within the state is well established. Further, there can be no doubt that interstate commerce is subject to regulation exclusively by Congress, and the state cannot tax or otherwise directly regulate or burden such commerce. (State of Missouri ex rel. Barrett, Attorney General, et al., vs. Kansas Natural Gas Company, 282 Fed. 341, and cases cited.) The only question then is whether the plaintiff corporation is doing such a local business [fol. 77] within this state as to render it subject to the excise tax, the levy of which it seeks to enjoin, and the burdens and penalties resulting from which it seeks to avoid.

Among the purposes for which the corporation was formed and the business or objects to be carried on and promoted by it, as set forth in its articles of association, are the following:

"To engage in and carry on the business of constructing, purchasing, leasing, or otherwise acquiring, and holding, owning, improving, developing, managing, maintaining, controlling, operating, mortgaging, creating liens upon, selling, conveying, or otherwise disposing of pipe lines, transmission lines, and any and all other means of carriage and transportation located entirely outside the State of Maryland, together with pumping stations, terminals, storage plants and all other appurtenances, incidental to the transportation, as a private or a public service, of petroleum, mineral oils, natural gas, coal and other oils, minerals and mineral and hydro-carbon substances of every kind, and all kinds of products and by-products derived from said substances or any of them.

"To engage in and carry on the business of constructing, purchasing, leasing ar otherwise acquiring and holding, owning, improving, developing, managing, maintaining, controlling, operating, mortgaging, creating liens upon, selling, conveying or otherwise disposing of telegraph and telephone lines located entirely outside the State of Maryland, with all rights, privileges and franchises appertaining thereto.

"To purchase, lease, hire or otherwise acquire, hold, own, develop, improve and dispose of, and to aid and subscribe toward the acquisition, development or improvement of real and personal property and rights and privileges therein, suitable or convenient for any of the business of the corporation, and to acquire, take, hold, own, construct, erect, improve, manage and operate, and to aid and subscribe toward the acquisition, construction or improvement of oil

wells, gas wells, mine refineries, manufacturing plants, pipe lines, tanks, cars, piers, wharves, steam and other vessels for water transportation and any other works, property or appliances which may appertain to or be useful in the conduct of any of the business of the corporation.

"To borrow or raise moneys for any of the purposes of the corporation, issue bonds, debentures, notes or other obligations of any [fol. 78] nature, and in any manner permitted by law, for moneys so borrowed or in payment for property purchased, and to secure the payment thereof and of the interest thereon, by mortgage upon, or pledge or conveyance or assignment in trust of, the whole or any part of the property of the corporation, real or personal, including contract rights, whether at the time owned or thereafter acquired; and to sell, pledge, discount or otherwise dispose of such bonds, notes or other obligations of the corporation for its corporate purposes.

"To carry out all or any part of the foregoing objects as principal, factor, agent, contractor, or otherwise, either alone or through or in conjunction with any person, firm, association or corporation, and in any part of the world; and, in carrying on its business and for the purpose of attaining or furthering any of its objects and purposes, to make and perform any contracts and to do any acts and things, and to exercise any powers suitable, convenient or proper for the accomplishment of any of the purposes herein enumerated or incidental to the powers herein specified, or which at any time may appear conducive to or expedient for the accomplishment of any of such purposes, if not inconsistent with the laws of the State of Maryland."

In paragraph twelve it is thus expressly provided:

"It is the intention that the objects and purposes specified in the foregoing clauses of this Article C, shall not, unless otherwise specified herein, be in anywise limited or restricted by reference to, or inference from the terms of any other clause of this or any other article in this certificate, but that the objects and purposes specified in each of the clauses of this Article shall be regarded as independent objects and purposes."

Judged then by the construction placed upon its business and purposes by complainant itself in its own organic law, it has engaged, and is now engaging, in the various kinds of business enumerated in some or all of the sections above quoted. It seeks to avoid the effect of this situation by the contention that its business really consists only in the transportation of oil in interstate commerce, and that all its activities in this state, to which reference has been made, are mere incidents of its interstate commerce and essential to its trans-[fol. 79] action in that commerce.

The Attorney General in his brief fairly recites the nature of the business transacted by complainant in this state. For the sake of brevity I quote the language of the brief upon this point:

"The plaintiff maintains its principal office in Missouri, in th City of St. Louis, where it keeps its stock certificate books, books c account, financial reports, bank accounts, pays all the employee both within and without the state, purchases supplies within th state, employs labor within the state, maintains and operates tel phone and telegraph lines and purchases supplies and equipmer therefor in this state, acquires rights-of-way both by purchase an condemnation under its right of eminent domain granted to it by th state. It is constantly entering into and executing contracts fo the transportation of crude oil, and of employment and purchase and has frequent damage cases by reason of broken and leaking pip lines which result in overflowing and damaging the lands adjacen thereto. Settlements and adjustments of such damages are affecte both in and out of the courts of this state. Material and labor ar assembled at the broken points and repairs made.

"The vice-president, secretary, treasurer and other officers maintai their offices and headquarters in their offices in St. Louis, where tele phones are maintained and the name of the company appears o the doors of said officers. Stockholders and directors meetings ar held there. All certificates for the receipt of oil for transportatio are sent to the St. Louis office where the revenue for said trans portation is figured and entered of record. The tariff rates are als kept there and in fact the entire business of the corporation i managed and directed from the St. Louis office."

This statement is not traversed and is not susceptible of con tradiction in any substantial particular. The general manager ex ercises final control over the business of the company in and fro the St. Louis office. It is manifest not only that a very considerabl part of the property of the complainant and the instrumentalities o discharging the functions of the corporation are within the State o [fol. 80] Missouri. In my opinion, this case falls within the spirit, and almost exactly within the letter, of the decision of the Supreme Court of the United States in the cases of Copper Range Company and Champion Copper Company reported in Cheney Brothers Company vs. Commonwealth of Massachusetts, 246 U. S. 147. In his opinion Mr. Justice Van Deventer made a very helpful and practical analysis of the activities which are held to constitute local business affording bases for a tax of this nature and pointed out the controlling distinctions. In my opinion, that case is decisive of this controversy under the testimony produced at the hearing.

It is significant that complainant has thought it necessary to comply with the laws of the State of Missouri applicable to corporations for pecuniary profit formed in other states and desiring to be authorized or permitted to transact business in the State of Missouri, later filing with the Secretary of State amended articles showing an increase of its capital stock and the amount of its capital employed in this state, and has received the certificate and license issued to foreign corporations, thus evidencing a purpose to do business in this state and making formal compliance with the law to that end. In its bill complainant "states that it complied with said provisions

for the reason that it desired to do an interstate business through and across the State of Missouri, and desired to exercise all the rights, powers and privileges of pipe lines incorporated in the State of Missouri, and among other things desired to have the privilege of eminent domain which is granted pipe line companies organized under the State of Missouri by Section 1791 of the Revised Statutes of 1919". It now contends that its sole purpose in taking out this license was to insure to it the exercise of the right of eminent domain, [fol. 81] which right it has exercised; but this contention narrows, and is inconsistent with the broader purpose avowed in the bill. It may also be questioned whether under the authority of Southern Ill. & Mo. Bridge Company vs. Stone, 174 Mo. 1, cited by complainant, the exercise of the right of eminent domain, under the license essential to confer the right, does not constitute doing business in this state, subjecting complainant to all the "liabilities, duties and restrictions" of domestic corporations of like character. However, it is unnecessary so to decide, because it appears that complainant has engaged in activities amounting to the doing of business in this state within the meaning of the law and under the privilege and license solicited and conferred.

It follows that the findings must be for the defendants, and that an appropriate decree may be prepared and entered. It is so ordered.

Kansas City, Missouri, March 10, 1923.

Arba S. Van Valkenburgh, District Judge.

And afterwards, to-wit, on March 26, 1923, the following proceedings were had in said cause, to-wit:

[Title omitted]

Now on this day is filed for record a decree signed by Honorable [fol. 82] Arba S. Van Valkenburgh, Judge of the United States District Court for the Western District of Missouri.

The said Decree is in words and figures as follows, to-wit:

IN THE DISTRICT COURT OF UNITED STATES FOR THE CENTRAL DIVISION OF THE WESTERN DISTRICT OF MISSOURI

[Title omitted]

DECREE—Filed March 26, 1923

This cause came on to be heard at the October Term of said Court, A. D. 1922, and was argued by counsel and was taken under advisement.

And thereafter, on this 26th day of March, 1923, the Court entered final judgment and decree, and it is hereby adjudged and deceased that the bill of plaintiff filed herein be dismissed and that defendants

recover from plaintiff their taxable costs herein, and that execution issue for same.

Arba S. Van Valkenburgh, United States District Judge.

O. K. as to form. Koerner, Fahey & Young, for Plaintiff.

[fol. 83] And afterwards, on May 29, 1923, the further proceedings were had in said cause, to-wit:

[Title omitted]

Now on this day comes the plaintiff, by its attorneys, and files its petition for appeal to the Supreme Court of the United States; and there is also filed the appeal bond, order allowing appeal and assignment of errors.

The petition for appeal, so filed as aforesaid, is in words and figures as follows, to-wit:

IN THE DISTRICT COURT OF UNITED STATES FOR THE CENTRAL DIVISION OF THE WESTERN DISTRICT OF MISSOURI

[Title omitted]

PETITION FOR APPEAL—Filed May 29, 1923

To the Honorable Arba S. Van Valkenburgh, District Judge:

The above named plaintiff, Ozark Pipe Line Corporation, feeling aggrieved by the decree rendered and entered in the above entitled cause on the 12th day of March, A. D. 1923, does hereby appeal from said decree to the Supreme Court of the United States for the reasons set forth in the Assignment of Errors filed herewith, and prays that its appeal be allowed, and that citation be issued as provided by law, and that a transcript of the record proceedings and documents upon [fols. 84 & 85] which said decree was based, duly authenticated be sent to the Supreme Court of the United States sitting at Washington, D. C., under the rules of such court in such cases made and provided.

And your petitioner further prays that the proper order relating to the required security to be required of it be made.

Koerner, Fahey & Young, Attorneys for Plaintiff.

Allowed May 29/23. Arba S. Van Valkenburgh, Judge.

IN UNITED STATES DISTRICT COURT

BOND ON APPEAL [For $1,000.00; filed and approved May 29, 1923; omitted in printing]

[fol. 86] And said Order Allowing Appeal, filed as aforesaid, is in words and figures as follows, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE CENTRAL DIVISION OF THE WESTERN DISTRICT OF MISSOURI

[Title omitted]

ORDER ALLOWING APPEAL

On motion of Koerner, Fahey & Young, appearing by Truman Post Young, Solicitors and Counsel for plaintiff, it is hereby ordered that an appeal to the Supreme Court of the United States from the decree heretofore filed and entered herein be, and the same is hereby allowed, and that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to said Supreme Court of the United States. It is further ordered that the bond on appeal be fixed at the sum of One Thousand Dollars ($1,000.00).

Dated May 29th, 1923.

Arba S. Van Valkenburgh, District Judge.

And said Assignment of Errors, filed as aforesaid, is in words and figures as follows, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE CENTRAL DIVISION OF THE WESTERN DISTRICT OF MISSOURI

[fol. 87] [Title omitted]

ASSIGNMENT OF ERRORS

Now comes Ozark Pipe Line Corporation, plaintiff in the above entitled cause, and files the following assignment of errors upon which it will rely upon its prosecution of the appeal in the above entitled cause from the decree made by this Honorable Court on the 12th day of March, 1923.

I

The United States District Court for the Central Division of the Western District of Missouri erred in ruling that the corporation franchise tax law of the State of Missouri referred to in plaintiff's petition, as said law has been construed by the defendants, the Attorney General of the State of Missouri, and the members of the Tax Commission of the State of Missouri, does violate the commerce clause of the Constitution of the United States, to-wit: Section 8 of Article 1 of said Constitution.

II

The court erred in ruling that under the evidence the plaintiff is doing an intra-state business within the State of Missouri and is,

therefore, subject to pay a tax under the corporation franchise tax law of said state.

III

The court erred in not ruling that under the law and the evidence the plaintiff is doing only an interstate business through and across [fol. 88] the State of Missouri and that the attempt of the State of Missouri to levy a corporation franchise tax against said plaintiff on account of said interstate business is a violation of Section 8 of Article 1 of the Constitution of the United States.

IV

The court erred in ruling that the fact that the plaintiff is authorized by its charter to engage in other business than that of interstate commerce is material, and in not ruling that the only question involved was whether as a matter of fact said corporation was engaged in any business other than that of interstate commerce.

V

The court erred in ruling that the fact that plaintiff maintains an office in the City of St. Louis and owns property in the State of Missouri, all of which is incidental to the transaction of interstate commerce, renders it subject to the corporation franchise tax of the State of Missouri, and that the maintainance of said office and the owning of such property constitutes doing intra-state business within the State of Missouri.

VI

The court erred in ruling that the fact that the plaintiff filed with the Secretary of the State of Missouri a copy of its charter and obtained a license from said state to do business in the State of Missouri, and paid the fees for said license, renders it further liable to pay the tax provided by the corporation franchise tax law of said [fol. 89] state and is evidence that said Company is doing an intra-state business within the State of Missouri.

Wherefore, the appellant prays that said decree be reversed and that said District Court for the Central Division of the Western District of Missouri be ordered to enter a decree in favor of the appellant.

Koerner, Fahey & Young, Attorneys for Appellant.

And afterwards on the same day, May 29, 1923, the further proceedings were had in said cause, to-wit:

[Title omitted]

Now on this day is issued a citation directed to Roy Monier and George M. Hagee, constituting the State Tax Commission of the State of Missouri, and Jesse W. Barrett, Attorney General of Missouri.

And said Citation is in words and figures as follows, to-wit:

CITATION AND SERVICE

The United States of America to Roy Monier and George M. Hagee, constituting the State Tax Commission of the State of Missouri, and Jesse W. Barrett, Attorney General of the State of Missouri, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States at the City of Washington, thirty days from and after the day this citation bears date, pursuant to an [fol. 90] appeal filed in the Clerk's office of the District Court of the United States for the Central Division of the Western District of Missouri, wherein the Ozark Pipe Line Corporation, a corporation, is appellant and you are appellees, to show cause, if any there be, why the decree rendered against said appellant as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Arba S. Van Valkenburgh, Judge of the District Court of the United States within and for the Central Division of the Western District of Missouri, this twenty-ninth day of May in the year of our Lord one thousand nine hundred and twenty-three.

Arba S. Van Valkenburgh, United States District Judge for the Central Division of the Western District of Missouri.

Service of the above citation acknowledged this 2nd day of June, 1923.

Jesse W. Barrett, Attorney General of the State of Missouri, Attorney for Defendants, Appellees.

Received June 4, 1923. Koerner, Fahey & Young.

And afterwards, to-wit, on June 18, 1923, the further proceedings were had in said cause, to-wit:

[Title omitted]

[fol. 91] Now on this day comes the Plaintiff Appellant, by its attorneys, and files a motion for extension of time to file transcript

and there is also filed an order of court signed by Honorable Arba S. Van Valkenburgh, Judge, extending the time to file transcript.

The order filed, as aforesaid, is in words and figures as follows, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE CENTRAL DIVISION OF THE WESTERN DISTRICT OF MISSOURI

[Title omitted]

ORDER EXTENDING TIME

On motion of plaintiff appellant in the above entitled cause it is hereby ordered that the time for the preparation and filing of the record in the Supreme Court of the United States in the above entitled cause on appeal is hereby extended for a period of ninety (90) days from and after June 28, 1923.

Arba S. Van Valkenburgh, Judge.

And afterwards, to-wit, on July 2nd, 1923, the further proceedings were had in said cause, to-wit:

[fol. 92] [Title omitted]

Now on this day comes the plaintiff appellant, by its Attorneys, and files a præcipe for transcript in the above entitled cause.

And said præcipe, filed as aforesaid, is in words and figures as follows, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE CENTRAL DIVISION OF THE WESTERN DISTRICT OF MISSOURI

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed July 2, 1923

To the Clerk of the District Court of the United States for the Western District of Missouri:

In making up the transcript of the record in the above entitled cause for the Supreme Court of the United States upon the appeal of the plaintiff therein, will you please incorporate into such transcript the following portions of the record, to-wit:

1. Petition.
2. Answer.
3. Reply.
4. Statement of the evidence.

[fol. 93] 5. All of the exhibits offered in the case, to-wit: Plaintiff's Exhibits A, B, C, and D, and Defendants' Exhibits 1 and 2.

6. Opinion of Court.

7. Decree of Court.

8. Petition for appeal.

9. Bond on appeal.

10. Order allowing appeal.

11. Assignment of errors.

12. Citation.

13. Order of Court extending time for filing transcript in Supreme Court.

14. This præcipe.

The above being a full and complete record in this case.

Koerner, Fahey & Young, Attorneys for Plaintiff Appellant.

The undersigned, attorneys for the defendants in the above entitled cause, hereby acknowledged service of a copy of the above præcipe this 16th day of June, 1923.

Jesse W. Barrett, Attorney General.

[fol. 94] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE CENTRAL DIVISION OF THE WESTERN DISTRICT OF MISSOURI

[Title omitted]

CLERK'S CERTIFICATE

I, Edwin R. Durham, Clerk of the District Court of the United States for the Western District of Missouri, hereby certify that the above and foregoing is a true copy of the original record and proceedings in the above entitled cause, as the same appear of record and on file in my office. Said record consists of the petition filed by plaintiff, answer of defendant, reply, statement of the evidence, all of the exhibits offered in the case, to-wit: (plaintiff's exhibits A, B, C, and D, and defendants' exhibits 1 and 2), opinion of court, decree of court, petition for appeal, bond on appeal, order allowing appeal, assignment of errors, citation, order of court extending time for filing transcript, and præcipe.

Witness my hand as clerk, and the seal of said Court. Done at office in Jefferson City, Missouri, this 25th August, A. D. 1923.

Edwin R. Durham, Clerk, By F. J. Fromme, Deputy. [Seal of the United States District Court of Missouri, Central Division, Western District.]

[fol. 95] STATEMENT OF COSTS [omitted in printing]

Endorsed on cover: File No. 29,885. W. Missouri D. C. U. S. Term No. 575. Ozark Pipe Line Corporation, appellant, vs. Roy Monier and George M. Hagee, constituting the State Tax Commission of the State of Missouri, and Jesse W. Barrett, Attorney General of the State of Missouri. Filed September 25, 1923. File No. 29,885.

IN THE

SUPREME COURT OF THE UNITED STATES.

OZARK PIPE LINE CORPORATION,
Appellant,
v.
ROY MONIER and GEORGE M. HAGEE, Constituting the State Tax Commission of the State of Missouri, and JESSE W. BARRETT, Attorney-General of the State of Missouri,
Appellees.

No. 181

Appeal from the District Court of the United States for the Western District of Missouri.

BRIEF FOR APPELLANT.

KOERNER, FAHEY & YOUNG,
KENT KOERNER,
WILLIAM F. FAHEY,
TRUMAN POST YOUNG,
JOHN M. CARROLL,
Attorneys for Appellant.

ST. LOUIS LAW PRINTING CO., 415 North Eighth Street. Central 4477.

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Index of Cases Cited.

IN THE

SUPREME COURT OF THE UNITED STATES.

OZARK PIPE LINE CORPORATION,
Appellant,
v.
ROY MONIER and GEORGE M. HAGEE, Constituting the State Tax Commission of the State of Missouri, and JESSE W. BARRETT, Attorney-General of the State of Missouri,
Appellees.
No. 575.

Appeal from the District Court of the United States for the Western District of Missouri.

BRIEF FOR APPELLANT.

STATEMENT.

On May 9, 1922, the appellant filed its complaint in this cause against the appellees, seeking to enjoin the enforcement of the so-called Missouri Franchise Tax Law, so far as it was claimed by the appellees that said law was applicable to the appellant. The ground of the complaint is that the appellant is

doing a strictly interstate business; that it does no intrastate business whatever, and that the State of Missouri therefore cannot levy a franchise tax for the privilege of doing business across the State of Missouri against the appellant.

The appellant is a corporation organized under the laws of the State of Maryland. It operates a pipe line for the purpose of transporting crude petroleum from Cushing, Oklahoma, to Wood River, Illinois. The route of this pipe line is shown in Plaintiff's Exhibit A, inserted at page 26 of the record. The evidence shows that the appellant has a pumping station at Cushing, Oklahoma, another one at Verdi, Oklahoma, and three pumping stations in the State of Missouri, along the line; namely, at Shelton, Roxdale and Yarna. It receives no oil in Missouri for transportation and it makes no deliveries of oil in Missouri; all of the oil received by it is received in Oklahoma and is pumped through the line to Wood River, Illinois.

After its organization in Maryland the company, on January 9, 1920, obtained a license to do business in the State of Missouri under Section 9792 of the Revised Statutes of Missouri of 1919, and paid to the State of Missouri the corporation tax and fees required by that section. The corporation at that time had a capital of $10,400,000.00, and it paid to the State of Missouri corporation taxes and license fees amounting to $2,696.50.

Subsequently the capital of the company was increased to $30,000,000.00, and on August 18, 1921, it paid an additional corporation tax and license fee to the State of Missouri amounting to $3,705.00, and was duly authorized to do business in the state in accordance with the provisions of said section 9792.

The company also pays ad valorem taxes upon physical property, pumping stations and rights of way to the State of Missouri, and taxes upon personal property, such as office fixtures, automobiles, etc.

In addition to the above taxes the State of Missouri has attempted to collect from the appellant a so-called franchise tax under Sections 9836 to 9848, inclusive, of the Revised Statutes of Missouri of 1919. These statutes provide for the payment of an annual franchise tax to the State of Missouri by every corporation organized under the laws of the State and by every corporation not organized under the laws of the state and engaged in business in the state.

It was the contention of the appellant that it was not liable for the payment of this franchise tax for the reason that it does no intrastate business within the State of Missouri. The appellees refused to accede to this contention and were preparing to take steps against the appellant by the issuance of a tax bill, which would become a lien on the property, and had referred the matter to the Prosecuting Attorney of St. Louis for action by him. At that stage of

the proceedings the company got the Commission to postpone action until this suit could be filed (Rec., p. 18).

THE PLEADINGS.

The bill of complaint was filed, as stated, on May 9, 1922 (Rec., p. 1); the complaint sets out in detail the contentions of the appellant in regard to the matters above enumerated; namely, that the company is doing an interstate business only; that it receives no consignments of oil within the State of Missouri and delivers no consignments of oil within the State of Missouri, but transports all consignments of oil through the State of Missouri from Oklahoma to Illinois; that the company complied with the laws of Missouri applicable to foreign corporations, for the reason that it desired to have all the powers of a Missouri corporation, among others, the privilege of eminent domain (Rec., p. 4); that the plaintiff is a common carrier and a public utility, subject to the jurisdiction of the Interstate Commerce Commission; that it transports oil at rates approved by the Interstate Commerce Commission.

The complaint then sets out the provisions of Section 9836 of the Revised Statutes of Missouri 1919 (Rec., p. 5), and subsequent sections, and alleges that the defendant Jesse W. Barrett was threatening to

bring an action to revoke the license of the plaintiff obtained from the State of Missouri on January 9, 1920, and to deprive it of its power of eminent domain, and to cause a tax bill to be issued with a 25 per cent penalty, with interest at the rate of 1 per cent a month, which would become a lien upon the property of the appellant in the State of Missouri. It is then pleaded that the Missouri Franchise Tax Act is unenforceable against the complainant under the Constitution of the United States for the reason that the complainant is doing nothing but an interstate business (Rec., p. 7).

In the defendants' answer (Rec., p. 9) the defendants called upon the complainant for strict proof as to the western terminus of the line at Cushing, Oklahoma, and as to the eastern terminus of the line at Wood River, Illinois, and called for proof that the plaintiff is engaged solely in the business of operating a pipe line and certain gathering lines in the State of Oklahoma, and is engaged solely in the business of conducting crude petroleum through said pipe line from the State of Oklahoma to the State of Illinois and through and across the State of Missouri.

The defendants denied that the plaintiff does no business within the State of Missouri, and averred that it is engaged in business within the state. This denial raises the only real issue in the case. The balance of the answer consists either of admissions

or of calls upon the plaintiff for proof of matters which are neither admitted nor denied, and of denials of matters of law.

The only issue in the case, both on the pleadings and at the trial, was the question whether or not the complainant was engaged in business within the state in such a way as to render it liable to the franchise tax of the state.

The reply was a general denial. [Through an error the record contains, instead of the reply, the reply memorandum for plaintiff (Rec., p. 12). After the case had been taken under advisement the plaintiff filed a memorandum brief. To this brief the defendants answered by a memorandum brief for the defendants, and the plaintiff thereupon filed its reply memorandum. It was not our intention to have any of these briefs set out in the record. The praecipe set out at page 50 calls for the petition, the answer and the reply. With this explanation, we pass by the reply memorandum appearing at page 12 of the record.]

THE EVIDENCE.

The original Articles of Association of the Ozark Pipe Line Corporation were offered in evidence, (Plaintiff's Exhibit D, page 29). These articles show that the corporation, as originally incorporated in

Maryland, was given very broad powers, and these powers are commented upon by the court below in its opinion (page 42).

The original certificate of authority to do business in the State of Missouri, which was obtained by the company on January 9, 1920, was also offered in evidence (Plaintiff's Exhibit C, page 28). This certificate states that the corporation is from the date thereof "duly authorized and licensed to engage in the State of Missouri exclusively in the business of transporting crude petroleum by pipe line," etc. It is thus apparent that whatever the company's general powers under its original charter were, its authority under the certificate and license issued by the State of Missouri, upon which some stress was laid below, was merely and exclusively one to engage in the business of transporting crude petroleum by pipe line.

After this certificate and license had been obtained from the State of Missouri the corporation increased its capital stock and obtained the certificate of such increase from the Secretary of State of Missouri, (Plaintiff's Exhibit B, page 28). This certificate is dated August 18, 1921, and in no way enlarges the certificate and license of January 9, 1920, in so far as the kind of business authorized by such certificate is concerned.

In order to supplement the certificates above described, which had been offered by the plaintiff, the

defendants offered two exhibits, set out at pages 40 and 41. These are affidavits. Exhibit I is dated January 5, 1920, and was made by Mr. T. F. Lydon, principal officer of the company in Missouri on that date. This affidavit was made at the time of obtaining the original certificate and license. It sets out the proportion of its capital stock represented by property in Missouri, to wit: A 10-inch pipe line extending from the Missouri-Oklahoma line to the Mississippi River. It also states that the principal office of the corporation, or place of transaction of its business in Missouri, where legal service may be obtained upon it, is located on the fourteenth floor of the Arcade Building, St. Louis, Missouri.

Defendant's Exhibit 2 is an affidavit of Mr. P. R. Chenoweth, assistant secretary of the company, dated August 17, 1921, which was made at the time of the increase of the capital stock of the company, as shown by Plaintiff's Exhibit B. This affidavit sets out the authorized capital of the company and that the amount of property and business of said corporation in Missouri is $12,720,000.00.

At the present time we desire merely to call the Court's attention to the language of these instruments. We shall comment upon the legal effect thereof in the argument.

There were only two witnesses examined: Mr. Carl Barker, the tax commissioner of the corporation (page

17), and Mr. Robert Bascom, the general manager of the corporation (page 22).

The evidence disclosed the following facts:

The company's business consists of transporting crude petroleum by pipe line. It receives the petroleum at points in the State of Oklahoma and delivers it to Wood River. It receives no shipments of oil in Missouri; it makes no deliveries in Missouri. Approximately fifty per cent (50%) of its property lies within the State of Missouri—that is, pipe lines, rights of way, pumping stations and physical assets.

It is a common carrier. It receives shipments from anyone tendering them. It has rates on file with the Interstate Commerce Commission and complies with the orders of the Commission. Its rates are approved by the Commission. The company does no other business.

There are three pumping stations along the line in Missouri. These stations are used to boost the oil through the line. The capacity of the line depends on the number of stations and the distance between them. It is necessary to have stations at various points. These stations build up the pressure on the line and boost it through. They are not storage tanks in any sense. It is approximately eighty miles between stations. The station is a building with pumps and engines in it.

The pumping stations at Shellton, Roxdale and Yarna consist each of a pumping station building, which houses the pumping units. There are three 12,000-barrel pumps at each station directly connected to the engine which operates them. Only two of the pumps and engines are operated at one time, giving the line a capacity of 24,000 barrels per twenty-four hours. The other structures at each station consist of an auxiliary building, which houses auxiliary equipment, that is, steam-heating equipment, four plant electric generators, etc., to be used in the operation of the pumping station, cottages for the employes and one 37,500-barrel tank and a smaller tank of 1,000-barrel capacity, known as a "flow tank," and there are miscellaneous pipe and connections, water supply, sewer system and that sort of thing used in connection with the houses and the operation of the station.

The oil comes in the pipe line from Cushing. When it reaches Shellton it flows directly to the pumps and is pumped on through the lines to the next station. The effect of the pumps is to increase the pressure from Shellton on. The purpose of the 1,000-barrel flow tank is this: It is impossible to so synchronize all of the pumping stations that each station will handle the amount of the station behind it, and the thousand-barrel tank does what is called "ride on the suction line." For exam-

ple, if the station at Shellton pumps less than comes in from the station behind it, the oil will rise in the flow tank. If Shellton station pumps more oil than it receives, the oil will go down in the flow tank. The flow tank is used to put the stations "in step"; to take care of the little differences of operations between two stations, and to give the dispatchers an idea of what the stations are doing, so they can more accurately control the pumping. The flow tank is directly connected with the pipe line at all times.

The 37,500-barrel tank is used solely in case of an emergency. It is connected with the pipe line, but is normally shut off by use of a valve in the line. If a line breaks ahead of the pumping station or anything happens to a station, it is advisable not to shut the line down in its entirety. From an operating standpoint you have to keep the stream in motion, because particularly in the winter time the oil becomes very viscous and cold, and it is almost impossible, if you once shut it down, to start it again; therefore as much of the oil is kept in operation as possible by cutting the stream into the 37,500-barrel tank until the pipe line is fixed. Then the pumping is resumed and the oil in the 37,500-barrel tank is run back into the line and the pump started at a higher rate than that at which the oil is coming in. The difference is thus taken out of the 37,500-bar-

rel tank and the contents are thus pumped into the line.

The arrangements for the transportation of oil with shippers are made wherever the business is available; sometimes in St. Louis, sometimes in other places. Mr. Airey, one of the directors of the company in New York, has at times made contracts with shippers. Part of the details of one shipment were arranged in Bartlesville, Oklahoma. Some contracts or details of arrangements are made at Tulsa. If a man wants to ship oil, the company makes connection to its tanks. He either writes a letter or comes to see the representatives of the company or they go to see him, or he calls by telephone and asks the condition of the traffic through the line, so he can find out whether he can get his crude promptly, or whether there will be a delay in transportation. The company gives what is known as a "run ticket," which is a receipt for the oil. That is fixed by the act to regulate interstate commerce. Those receipts are made out and given to the shipper at Cushing. He gets a receipt as he delivers the oil. He does not get any written contract from St. Louis at all.

The company has offices in Oklahoma, Missouri and Maryland. Stockholders' meetings are held in Maryland. Directors' meetings are held wherever they get a quorum or necessity demands. The directors reside partially in Missouri and partially in New

York. There was a time when the majority of the directors resided in New York.

The home office is in Maryland; it is a statutory office. The office in St. Louis consists of three or four rooms located in the Arcade Building. The company has a telephone. The number is in the telephone book. The company is called there by various people from various points. The president of the company is in charge there, Mr. F. Godber. The other officials are secretary, treasurer and two vice-presidents; that is five officers. The secretary is in charge of the records and books of accounts. He has them in his office in the Arcade Building. He has charge of the stock certificate books in his office in St. Louis. The treasurer has custody of the finance or cash of the company. It maintains accounts of deposit in St. Louis. Wages are paid for St. Louis employes out of the office at St. Louis. They consist of clerical employes in the office, stenographers, clerks and bookkeepers. There are three or four stenographers. The company has six or eight employes in the St. Louis office, in addition to the officers. They all receive their pay at that office. The company pays rent for the offices. It doesn't own the building.

The office in Oklahoma consists of four or five rooms in a one-story frame building. It is an office building. There are no other offices in it. It is a permanent building built on the company's property. The super-

intendent of operations has his office there and other employes incident to that office. There are ten or twelve employes in that office. There is the superintendent of operations, his assistants, the master mechanic, station employes, chief engineer, gaugers, etc.

The officers are in St. Louis. They maintain their offices there and carry on their duties at their offices. The company has bookkeepers in St. Louis. They keep accounts and the books.

It requires attention to maintain the line across the state. Repairs have to be made if anything breaks. Men are sent out to do the work. The line is made of 10-inch steel. It comes from various pipe factories outside of Missouri. The company maintains track walkers or line walkers going over that line daily. One man walks it alone; takes a section.

The office building in Oklahoma is at what is known as "transit station," about two miles south of Cushing. The line walkers have regular homes along the line and patrol the line in both directions from their homes. They get their instructions from Cushing. The inspectors who ride in Ford automobiles frequently operate both in Oklahoma and Missouri, across the state line. The time of employes is kept in the Cushing office and sent to St. Louis, where the checks are prepared and mailed back to Cushing, from which point they are distributed.

The company owns no real estate in Missouri disconnected from pipe lines. It owns automobiles and trucks used in Missouri; mostly Fords. The trucks are used for hauling men, freight and material. They are probably maintained, that is, the mechanical requirements are maintained, in Missouri, and the material. There are six or eight cars and trucks altogether. The company makes property tax returns to the various counties. It has office equipment, that is, furniture.

Pipe lines, pumping stations, automobiles, telephone and telegraph lines and office equipment are the only things the company has in the State of Missouri.

Sometimes, for emergency repairs, purchases of material and supplies to maintain trucks are made locally. The company keeps a supply of such things at Cushing, and sometimes a requisition is sent to the Cushing office for the material and supplies from the warehouse at that point. Supplies are secured and repairs made wherever it is most convenient. It depends on circumstances entirely, on the condition of the truck, whether it can be driven, whether the repairs need to be made immediately or whether they can wait.

The revenue is collected at St. Louis. The books of account are kept there, as also are the books of rec-

ord, such as stock certificates and records of stockholders' meetings.

The pay checks are made in the St. Louis office from time sheets kept in Cushing.

The president resides in St. Louis.

There are three vice-presidents, two in St. Louis, one in New York.

The company has never exercised the right of eminent domain in Missouri. It regards that right as a valuable right, enabling it to change its line if necessary. An accident might happen to the line or part of the country might be opened up in subdivisions and put the line in a public road. Then it might become necessary to move the line, and without the right of eminent domain the company would be entirely at the mercy of the property owners on either side.

If damage occurs as the result of a break in the line, a claim agent is sent out and he arrives at a settlement with the property owner if possible.

The company pays general ad valorem taxes to the State of Missouri on its right of way, real estate and personal property. When the company obtained original certificate and license from the State of Missouri it paid $2,696.50, and on August 18, 1921, it paid a further tax of $3,705.00 on account of its increased capital. It has paid its property taxes to

the state right along. The amount of the tax in controversy here for the year 1921 amounts to $4,725.53, and to approximately $7,132.74 for subsequent years (Rec., p. 18).

The taxes in question here are taxes for the year 1921 and thereafter. Taxes for the year 1921 are governed by Sections 9836 to 9848, inclusive, of the Revised Statutes of Missouri 1919. Taxes for subsequent years are governed by said sections as amended by Session Laws of Missouri 1921, Extra Session, page 121. For the convenience of the Court we here set out the statutes in question:

REVISED LAWS OF MISSOURI 1919.

Sec. 9836. Annual Franchise Tax.—Every corporation organized under the laws of this state shall, in addition to all other fees and taxes now required or paid, pay an annual franchise tax to the State of Missouri equal to one-tenth of 1 per cent of the par value of its outstanding capital stock and surplus, or, if such corporation employs a part of its capital stock in business in another state or country, then such corporation shall pay an annual franchise tax equal to one-tenth of 1 per cent of its capital stock employed in this state, and for the purposes of this article such corporations shall be deemed to have employed in this state that proportion of its entire outstanding capital

stock and surplus that its property and assets in this state bear to all its property and assets wherever located. Every corporation, not organized under the laws of this state, and engaged in business in this state, shall pay an annual franchise tax to the State of Missouri equal to one-tenth of 1 per cent of the par value of its capital stock and surplus employed of Missouri equal to one-tenth of 1 per cent of the par value of its capital stock and surplus employed in business in this state, and for the purposes of this article such corporation shall be deemed to have employed in this state that proportion of its entire capital stock and surplus that its property and assets in this state bear to all its property and assets wherever located: Provided, that this law shall not apply to corporations not organized for profit, nor to express companies, which now pay an annual tax on their gross receipts in this state, and insurance companies, which pay an annual tax on their gross premium receipts in this state.

Sec. 9837. Corporations to Make Report, to Whom —When, to Contain, What.—Every corporation liable to the tax prescribed in the foregoing section shall make a report in writing to the Missouri Tax Commission, if it is in existence, and if not, then to the State Board of Equalization, annually on or before the first day of February, in such form as said Commission or said Board of Equalization may prescribe.

Such report shall be signed and sworn to before an officer duly authorized to administer oaths by the president, vice-president, secretary, treasurer or general manager of the corporation, and shall contain the following:

1. Name of corporation.

2. The location of its principal business office.

3. The names of its president, vice-president, secretary, treasurer, and members of the board of directors, with the residence and postoffice address of each.

4. The amount of authorized capital stock.

5. The amount of capital stock subscribed.

6. The amount of capital stock issued and outstanding.

7. The amount of capital stock paid up.

8. The par value of the stock.

9. The clear market value of the stock.

10. The amount of surplus and undivided profits.

11. The nature and kind of business in which the corporation is engaged and the location of its place or places of business.

12. The clear market value of its property and assets in this state.

13. The clear market value of its property and assets without this state.

14. The clear market value of its total capital stock, surplus, property and assets.

15. The change, or changes, if any, in the above particulars made since the last annual report.

Sec. 9838. State Tax Commission to Determine Amount—State Auditor to Make Tax Bills When—Taxes, When Due, etc.—The State Tax Commission or the State Board of Equalization, as the case may be, shall, on or before the 20th day of February in each year, determine from the facts reported, and from any facts within or coming to its knowledge, the proportion of the capital stock and surplus of each corporation employed in business in this state and the amount of the tax each corporation is liable to pay under the provisions of this article, and shall report the same to the State Auditor, who shall make out a tax bill therefor against each corporation and shall deliver the same to the State Treasurer and charge him therewith. The taxes provided for in this article shall be paid on or before the 15th day of April in each year and shall be due and payable to the State Treasurer without notice, who shall make out and deliver a receipt therefor, which shall recite that the corporation named therein has paid its annual franchise tax under the provisions of this article for the year ending on the 31st day of the following December.

Sec. 9839. Written Report, Who Shall Make, etc.—Every corporation organized under the laws of this

state and every foreign corporation engaged in business in this state and having no capital stock shall make a report in writing to the Missouri Tax Commission, or, if it is not in existence, to the State Board of Equalization, annually, on or before the first day of February, in such form as said Commission or said State Board of Equalization may prescribe. The report shall be signed and sworn to before an officer authorized to administer oaths by the president, vice-president, secretary, treasurer or other chief officer of the corporation, and forwarded to said Commission or said State Board of Equalization, as the case may be; provided, that all state, district, county, town and farmers' mutual companies now organized or that may be hereafter organized under any of the laws of this state, organized for the sole purpose of writing fire, lightning, windstorm, tornado, cyclone, hail and plate glass and mutual automobile insurance and for the purpose of paying any loss incurred by any member by assessment, shall not be required to make reports and shall be exempt from all the provisions of this section and article and shall not be required to pay any fees as in this article provided.

Sec. 9840. Report to contain.—Such report so made shall contain the following:

1. The name of the corporation.
2. The location of its principal office.

3. The names of the president, vice-president, secretary, treasurer and members of the board of directors, with the postoffice address of each.

4. The date of annual election of officers.

5. The nature of the business in which such corporation is engaged.

Sec. 9841. State Tax Commission, duties—annual fees.—Upon the filing of the report provided for in sections 9839 and 9840 of this article, said Commission or said State Board of Equalization, as the case may be, shall report to the State Auditor on or before the 20th day of February of every year, who shall charge and certify to the State Treasurer on or before August 1st of every year for collection as herein provided a fee of twenty-five dollars for every corporation organized as a mutual insurance corporation not having a capital stock, or any other corporation not organized strictly for religious, charitable or educational purposes and having no capital stock, or of a company or association organized to transact business of life or accident insurance on the assessment plan for the purpose of mutual protection and benefit to its members and the payment of stipulated sums of money to the family, heirs, executors, administrators or assigns of the deceased member thereof. All foreign life, fire, accident, surety, liability, steam boiler, tornado, health or other kind

of insurance company of whatever nature coming within the provisions of sections 9839 and 9840 and doing business in this state, having an outstanding capital stock of less than five hundred thousand dollars ($500,000.00) shall pay an annual fee of fifty dollars ($50.00), and all other such insurance companies having a capital stock of more than five hundred thousand dollars ($500,000.00) an annual fee of one hundred dollars ($100.00) for the privilege of doing business in this state, and all building and loan associations to pay an annual fee to the state of twenty-five dollars ($25.00) for the privilege of doing business in this state, in place of the fee based on the capital as hereinbefore provided.

Sec. 9842. Taxes to be a lien.—The taxes and penalties to be paid by the provisions of this article shall be a first lien on all property and assets of the corporation within this state.

Sec. 9843. Delinquents—how collected—penalty.—If any corporation fails or refuses to pay the taxes assessed against it under the provisions of this article on or before the first day of May, the State Treasurer shall certify a list of such corporations so delinquent to the Attorney-General, who shall proceed forthwith to collect the same, together with a penalty of 25 per cent and interest at the rate of one per cent per month. Suits for the collection of

such taxes may be brought in the name of the state in any court of competent jurisdiction and any judgment rendered therein in favor of the state shall be a first lien on all the property and assets of the corporation within this state.

Section 9844. Failure to make report, prosecuting attorney to bring action, etc. If any corporation subject to the provisions of this article shall fail or neglect to make the report herein required or within the time herein required, such corporation, ir organized under the laws of this state, shall forfeit its charter, or, if a foreign corporation, shall forfeit its right to engage in business in this state, and the Attorney-General or, at his direction the Prosecuting Attorney of the county in which such corporation has its principal business office, shall bring an action in the name of the state in some court of competent jurisdiction to annul the charter or revoke the license of such corporation to engage in business in this state.

Section 9845. Value of property—not to be set out, when. All insurance companies, building and loan associations and other corporations, the fees of which are fixed at lump sums by this article, and all corporations which employ all their property and all their outstanding capital stock in this state shall all report and pay the fees on all its outstanding

capital stock, whether employed in this state or not, shall not be required to set out in the report required by this article the value of its property within this state or without the state.

Secion 9846. Board may summon witnesses, take testimony, etc., when. If any corporation subject to the provisions of this article fails or refuses to make full and complete answers to the questions contained in the report required to be filed by it or if the Tax Commission or State Board of Equalization, as the case may be, finds that any answer or answers contained in said report are untrue or if said Tax Commission or the State Board of Equalization, as the case may be, has reason to believe and does believe that any corporation has made a false statement or concealed any fact or facts which are material in determining the amount of tax for which such corporation is liable or ought to be liable under the provisions of this article, then said commissioners may require the delinquent corporation, its officers, agents or employes to furnish information concerning their capital stock which is necessary in determining the amount of tax to be paid by them, and for that purpose said Commission or said State Board of Equalization, as the case may be, may summon witnesses to appear and give testimony and to produce records, books, papers, documents and all other

information of any kind or character required relating to any matter necessary to be ascertained for the purpose of arriving at the amount of such tax to be paid. The witnesses may be summoned by subpoena issued by any member of such commission or the secretary thereof, in the name of the commission, if such commission be in existence, in the name of such board, directed to the Sheriff of any county in the state and returnable to said Commission or said State Board of Equalization, as the case may be, which subpoena shall be served in like manner and the same effect and under similar conditions as if issued out of the Circuit Court. Such Commission or the State Board of Equalization, as the case may be, is also authorized to take depositions of witnesses residing within or without the state or absent therefrom, to be taken upon notice to the interested parties, if any, in like manner that depositions of witnesses are taken in civil cases in the Circuit Court in any matter which the Commission may have authority to investigate and determine. Oaths of witnesses in any matter under investigation or consideration of such Commission or State Board of Equalization, as the case may be, may be administered by the secretary or any member of such Commission or the State Board of Equalization, as the case may be. In case any witness shall fail to obey any subpoena or summons to appear before said Commission or

shall refuse to testify or answer any material questions and to produce records, books, papers or documents when required so to do, such failure or refusal shall be reported to the Attorney-General, who shall thereupon proceed in the proper course to compel obedience to any subpoena or summons or proper order of the Commission or State Board of Equalization, as the case may be, and said Commission or board may punish witnesses for any improper neglect or refusal.

Sec. 9847. Powers of Commission, etc.—Said Commission or said State Board of Equalization, as the case may be, shall have power to appoint a commissioner to take testimony in any proceeding or inquiry arising under the provisions of this article, and such Commissioner may take testimony within or without the state and have all the power and authority of said Commission or Board of Equalization to compel witnesses to appear and give testimony and to produce records, books, papers, documents or other evidence; such Commissioner shall return all testimony and evidence so taken to the Commission or Board of Equalization and shall be allowed a reasonable compensation and expenses, including stenographic fees. Any witness who shall knowingly or willfully give false answers to any questions propounded in any such sworn examination where the fact inquired of is within his knowledge shall be

deemed guilty of perjury. It shall be unlawful for any member of the Missouri Tax Commission or any member of the State Board of Equalization, as the case may be, or for any officer or employe of such Commission or such State Board of Equalization, as the case may be, or for any other officer or employe of the state to divulge or make known in any manner whatever not provided by law to any person any information obtained by them in the discharge of their official duties, or to divulge or make known in any manner not provided by law any document reviewed or evidence taken or report made under this article. Any offense against the foregoing provisions shall be a misdemeanor and shall be punished by a fine not exceeding one thousand dollars ($1,000.00) or by imprisonment in the county jail not exceeding six months.

Sec. 9848. Failure of Commission—State Board of Equalization to Act.—In the event that the State Tax Commission is not created or in existence all the powers and duties of such Commission under the provisions of this article shall devolve upon and be exercised and performed by the State Board of Equalization, and in such event the State Board of Equalization may employ such stenographic and clerical and other assistance as may be necessary to the proper carrying out of the provisions of this law.

SESSION LAWS OF 1921—EXTRA SESSION, PAGE 121.

Private Corporations: Relating to franchise tax upon private corporations, reports to be made, to whom and by whom to be made, annual fees and providing for collection of delinquent taxes.

Section 1. Repealing Section 9836, Article I, Chapter 90, R. S. of Mo. 1919, and Enacting New Section.—That Section 9836 of Article I, Chapter 90 of the Revised Statutes of Missouri 1919, is hereby repealed and a new section is enacted in lieu thereof to be known as Section 9836, and to read as follows:

Sec. 9836. Annual Franchise Tax.—Every corporation organized under the laws of this state shall, in addition to all other fees and taxes now required or paid, pay an annual franchise tax to the State of Missouri equal to one-twentieth of one per cent of the par value of its outstanding capital stock and surplus, or if such corporation employs a part of its capital stock in business in another state or country, then such corporation shall pay an annual franchise tax equal to one-twentieth of one per cent of its outstanding capital stock and surplus employed in this state, and for the purposes of this article such corporation shall be deemed to have employed in this state that proportion of its entire outstanding capital stock

and surplus that its property and assets in this state bears to all its property and assets wherever located. Every corporation not organized under the laws of this state and engaged in business in this state shall pay an annual franchise tax to the State of Missouri equal to one-twentieth of one per cent of the par value of its capital stock and surplus employed in business in this state, and for the purpose of this article such corporation shall be deemed to have employed in this state that proportion of its entire capital stock and surplus that its property and assets in this state bears to all its property and assets wherever located; provided, that this law shall not apply to corporations not organized for profit, nor to express companies which now pay an annual tax on their gross receipts in this state, and insurance companies which pay an annual tax on their gross premium receipts in this state. Provided, bank deposits shall be considered as funds of the individual depositor, left for safekeeping, and shall not be considered in computing the amount of tax collectible under the provisions of this act. If this provision, exempting bank deposits shall be declared unconstitutional by the courts, then the Legislature hereby declares that it is the intention that the remainder of this act shall be in full force and effect, and further declaring that it would have passed this act irrespective of the said exempting provision.

Sec. 2. Repealing Section 9837, Article I, Chapter 90, R. S. of Mo. 1919, and Enacting New Section.—That Section 9837 of Article I, Chapter 90 of the Revised Statutes of Missouri 1919, is hereby repealed and a new section is enacted in lieu thereof, to be known as section 9837, and to read as follows:

Sec. 9837. Corporations to Make Reports, to Whom —When—to Contain What.—Every corporation liable to the tax prescribed in the foregoing section shall make a report in writing to the Missouri Tax Commission, if it is in existence, and, if not, then to the State Board of Equalization annually, on or before the 1st day of March in such form as said Commission or said Board of Equalization may prescribe. Such report shall be signed and sworn to before an officer duly authorized to administer oaths by the president, vice-president, secretary, treasurer or general manager of the corporation, and shall contain the following:

1. Name of corporation.
2. The location of its principal business office.
3. The names of its president, vice-president, secretary, treasurer and members of the board of directors, with the residence and post office address of each.
4. The amount of authorized capital stock.
5. The amount of capital stock subscribed.

6. The amount of capital stock issued and outstanding.

7. The amount of capital stock paid up.

8. The par value of the stock.

9. The clear market value of the stock.

10. The amount of surplus and undivided profits on the 31st day of the preceding December, or on the last day of the preceding fiscal year of said corporation.

11. The nature and kind of business in which the corporation is engaged and the location of its place or places of business.

12. The clear market value of its property and assets in this state.

13. The clear market value of its property and assets without this state.

14. The clear market value of its total property and assets.

15. The amount of liabilities.

16. The change or changes, if any, in the above particulars made since the last annual report.

Sec. 3. Repealing Section 9838, Article I, Chapter 90, R. S. of Mo. 1919, and Enacting New Section.— That Section 9838 of Article I, Chapter 90 of the Revised Statutes of Missouri 1919, is hereby repealed and a new section is enacted in lieu thereof to be known as section 9838, and to read as follows:

Sec. 9838, State Tax Commission to Determine Amount—State Auditor to Make Tax Bills, When—Taxes, When Due, etc.—The State Tax Commission, or the State Board of Equalization, as the case may be, shall, on or before the 20th day of March in each year, determine from the facts reported, and from any facts within or coming to its knowledge, the proportion of the capital stock and surplus of each corporation employed in business in this state, and the amount of tax each corporation is liable to pay under the provisions of this article, and shall report the same to the State Auditor, who shall make out a tax bill therefor against each corporation and shall deliver the same to the State Treasurer and charge him therewith. The taxes provided for in this article shall be paid on or before the 15th day of May in each year, and shall be due and payable to the State Treasurer without notice, who shall make out and deliver a receipt therefor, which shall recite that the corporation named therein has paid its annual franchise tax under the provisions of this article for the year ending 31st day of the following December.

Sec. 4. Repealing Section 9839, Article I, Chapter 90, R. S. Mo. 1919, and Enacting New Section.—That Section 9839 of Article I, Chapter 90 of the Revised Statutes of Missouri 1919, is hereby repealed and a new section is enacted in lieu thereof to be known as section 9839, and to read as follows:

Sec. 9839. Written Reports, Who Shall Make, etc.— Every corporation organized under the laws of this state, and every foreign corporation engaged in business in this state and having no capital stock, shall make a report in writing to the Missouri Tax Commission, or if it is not in existence, to the State Board of Equalization, annually, on or before the first day of March, in such form as said Commission or said Board of Equalization may prescribe. The report shall be signed and sworn to before an officer authorized to administer oaths, by the president, vice-president, secretary, treasurer or other chief officer of the corporation, and forwarded to said Commission or said State Board of Equalization, as the case may be: Provided, that all state, district, county, town and farmers' mutual companies now organized or that may be hereafter organized under any of the laws of this state, organized for the sole purpose of writing fire, lightning, windstorm, tornado, cyclone, hail and plate-glass and mutual automobile insurance and for the purpose of paying any loss incurred by any member by assessment, shall not be required to make reports and shall be exempt from all the provisions of this section and article, and shall not be required to pay any fees as in this article provided.

Sec. 5. Repealing Section 9840, Article I, Chapter 90, R. S. of Mo. 1919, and Enacting New Section.—That Section 9840 of Article I, Chapter 90, of the Revised

Statutes of Missouri 1919, is hereby repealed and a new section is enacted in lieu thereof to be known as section 9840 and to read as follows:

Sec. 9840. Information Reports Shall Contain.— Such report so made shall contain the following:

1. The name of the corporation.

2. The location of its principal office.

3. The names of the president, vice-president, secretary, treasurer and members of the board of directors with the post office address of each.

4. The date of annual election of officers.

5. The nature of the business in which such corporation is engaged.

Sec. 6. Repealing Section 9841, Article I, Chapter 90, R. S. of Mo. 1919, and Enacting New Section.— That Section 9841 of Article I, Chapter 90, of the Revised Statutes of Missouri 1919, is hereby repealed and a new section is enacted in lieu thereof to be known as section 9841, and to read as follows:

Sec. 9341. State Tax Commission—Duties—Annual Fees.—Upon the filing of the report provided for in sections 9839 and 9840 of this article said Commission or said State Board of Equalization, as the case may be, shall report to the State Auditor on or before the 20th day of March of every year, who shall charge and certify to the State Treasurer on or before August 1st of every year for collection as herein

provided, a fee of twenty-five dollars for every corporation organized as a mutual insurance corporation not having a capital stock, or any other corporation not organized strictly for religious, charitable or educational purposes and having no capital stock, or of a company or association organized to transact business of life or accident insurance on the assessment plan for the purpose of mutual protection and benefit to its members and the payment of stipulated sums of money to the family, heirs, executors, administrators or assigns of the deceased member thereof. All foreign life, fire, accident, surety, liability, steam boiler, tornado, health or other kind of insurance company of whatever nature coming within the provisions of sections 9839 and 9840 and doing business in this state having an outstanding capital stock of less than five hundred thousand dollars ($500,000) shall pay an annual fee of fifty dollars ($50), and all other such insurance companies having a capital stock of more than five hundred thousand dollars ($500,000) an annual fee of one hundred dollars ($100) for the privilege of doing business in this state, and all building and loan associations to pay an annual fee to the state of twenty-five dollars ($25) for the privilege of doing business in this state, in place of the fee based on the capital stock and surplus as hereinbefore provided.

Section 7. Repealing Section 9843, Article I, Chapter 90, R. S. of Mo. 1919, and enacting new section.— That Section 9843 of Article I, Chapter 90, of the Revised Statutes of Missouri 1919, is hereby repealed and a new section is enacted in lieu thereof to be known as section 9843, and to read as follows:

Section 9843. Delinquents—how collected—penalty.—If any corporation fails or refuses to pay the taxes assessed against it under the provisions of this article on or before the first day of June the State Treasurer shall certify a list of such corporations so delinquent to the Attorney-General, who shall proceed forthwith to collect the same, together with a penalty of 25 per cent and interest at the rate of 1 per cent per month. Suits for the collection of such taxes may be brought in the name of the state in any court of competent jurisdiction and any judgment rendered therein in favor of the state shall be a first lien on all property and assets of the corporation within this state.

Section 8. Repealing Section 9845, Article I, Chapter 90, R. S. of Mo. 1919, and enacting new section.— That Section 9845 of Article I, Chapter 90, of the Revised Statutes of Missouri 1919, is hereby repealed and a new section is enacted in lieu thereof to be known as section 9845 and to read as follows:

Section 9845. Value of property—not to be set out in report—when.—All insurance companies, building and loan associations and other corporations, the fees of which are fixed at lump sums by this article, and all corporations which employ all their property and all their outstanding capital stock in this state or which will report and pay the fees on all of its outstanding capital stock, whether employed in this state or not, shall not be required to set out in the report required by this article the value of its property within this state or without the state. Approved August 4, 1921.

SPECIFICATIONS OF ERROR.

1. The Court erred in ruling that the Corporation Franchise Tax Law of the State of Missouri, as said law has been construed by the defendants, does not violate the commerce clause of the Constitution of the United States, to wit, Section 8 of Article I of said Constitution.

2. The Court erred in ruling that under the evidence appellant was doing an intrastate business within the State of Missouri and is therefore subject to pay a tax under the Corporation Franchise Tax Law of said state.

3. The Court erred in not ruling that under the law and the evidence the plaintiff was doing only an interstate business through and across the State of Missouri and that the attempt of the State of Missouri to levy a Corporation Franchise Tax against said plaintiff on account of said interstate business is a violation of Section 8, Article I, of the Constitution of the United States.

4. The Court erred in ruling that the fact that the plaintiff is authorized by its charter to engage in other business than that of interstate business is material and in not ruling that the only question involved was whether as a matter of fact said corpo-

ration was engaged in any other business than that of interstate commerce.

5. The Court erred in ruling that the fact that plaintiff maintains an office in the City of St. Louis and owns property in the State of Missouri, all of which is incidental to the transaction of interstate commerce, renders it subject to the Corporation Franchise Tax of the State of Missouri and that the maintenance of said office and the owning of such property constitutes doing intrastate business within the State of Missouri.

6. The Court erred in ruling that the fact that the plaintiff filed with the Secretary of the State of Missouri a copy of its charter and obtained a license from said state and paid the fees for said license renders it liable to the tax provided for by the Corporation Franchise Tax Law of said state and is evidence that said company is doing an intrastate business within the State of Missouri.

POINTS AND AUTHORITIES.

I.

The Missouri franchise tax, provided for by Sections 9836 to 9848, Revised Statutes of Missouri 1919, is a privilege license or excise tax; that is, it is a tax upon the privilege of doing business.

State ex rel. Marquette Hotel Investment Company v. State Tax Commission, 282 Mo. 213, l. c. 234.

II.

The maintenance of the office in St. Louis for the purposes shown in the evidence did not constitute doing an interstate business within the state which would be subject to taxation, nor did the maintenance of the pipe line nor the other activities described in the evidence. All of these activities centered around the interstate business of the company.

Cheney Bros. Company v. Massachusetts, 246 U. S. 147;

Norfolk & Western R. R. Company v. Pennsylvania, 136 U. S. 114, l. c. 120;

Gloucester Ferry Company v. Pennsylvania, 114 U. S. 196;

Philadelphia and Southern Mail Steamship Company v. Pennsylvania, 122 U. S. 326;

McCall v. California, 136 U. S. 104;
Pembina Consolidated Silver Mining & Milling Company v. Pennsylvania, 125 U. S. 181, l. c. 186 and 190.

III.

The powers granted to the company in the original charter issued to it by the State of Maryland are not decisive of the question raised as to what, if any, business the corporation does within the State of Missouri. That question is a question of fact and not of charter powers.

Upon this point we have cited no authorities specifically ruling upon the question. It is obvious, however, that a state cannot tax a foreign corporation for doing business within the state merely because it has the charter power to do so. See heading III of our argument, infra.

IV.

The fact that the company obtained a license from the Secretary of the State of Missouri under the Missouri statutes applicable to foreign corporations doing business within the state does not indicate that the company was doing an intrastate business.

Norfolk & Western R. R. Company v. Pennsylvania, 136 U. S. 114.

At the time the license was obtained from the state the company was beginning the construction of its pipe line and it desired to have the same rights as a Missouri corporation, including the right of eminent domain. Pipe line companies in Missouri have the right of eminent domain.

Section 1791, Revised Statutes of Missouri 1919. A foreign corporation complying with the Missouri statutes has the same right.

> Southern Illinois & Missouri Bridge Co. v. Stone, 174 Mo. 1.

Even if the corporation had been originally incorporated in Missouri, it would not be subject to a tax upon interstate commerce.

> Philadelphia & Southern Mail Steamship Company v. Pennsylvania, 122 U. S. 326.

Certainly, therefore, the obtaining of a license from the state by a foreign corporation would not render its interstate business taxable.

V.

No state may levy a franchise or excise tax upon a company doing solely an interstate business in, through or across the state. The transportation of oil from one state to another is interstate commerce.

> Eureka Pipe Line Co. v. Hallanan, 257 U. S. 265;

United Fuel Gas Company v. Hallanan, 257 U. S. 277;
Kansas City, Ft. Scott & Memphis Ry. Co. v. Bottkin, 240 U. S. 227;
Le Loup v. Port of Mobile, 127 U. S. 640.

VI.

Even where a corporation is doing both an interstate and an intrastate business, although the state has the power to tax the intrastate business, nevertheless, where the tax is so levied as to include, or compel the payment of, a tax upon the interstate business, it will be void.

Oklahoma v. Wells Fargo & Co., 223 U. S. 298;
Pullman Company v. Kansas, 216 U. S. 56;
Western Union Telegraph Co. v. Kansas, 216 U. S. 1;
International Paper Co. v. Massachusetts, 246 U. S. 135;
Crew Leavick v. Pennsylvania, 245 U. S. 292;
Looney v. Crane Co., 245 U. S. 178;
Ludwig v. Western Union Telegraph Co., 216 U. S. 146;
Locomobile Co. of America v. Massachusetts, 246 U. S. 146.

VII.

This case does not come within the principle of those cases holding that where a tax, though in form

a privilege tax, is in substance and effect a general property tax, it is valid.

> Postal Telegraph-Cable Co. v. Adams, 155 U. S. 688.

Nor does this case come within the principle of those cases holding that where the tax is a tax upon intrastate commerce the mere fact that the method of computation requires reference to interstate business will not render it invalid.

> Hump Hair Pin Manufacturing Co. v. Emmerson, 258 U. S. 290.

ARGUMENT.

From the evidence it clearly appears that the plaintiff was doing strictly an interstate business. Its business consists in owning and operating a pipe line from the Mid-Continent oil fields of Oklahoma to the Town of Wood River, Illinois. The pipe line extends from the oil fields in Oklahoma to the state line, thence across the State of Missouri, under the Mississippi River and to Wood River. The company makes no deliveries in Missouri and receives no shipments in Missouri. It has an office located in St. Louis; its president and its vice-president and some of the directors reside in St. Louis; the general manager resides in St. Louis; at least one of the directors resides in New York; stockholders' meetings are held in Maryland; directors' meetings are held where it is possible to get a quorum, sometimes in New York, sometimes in St. Louis. It also has an office at Transit Station near Cushing, Oklahoma. It employs men for the maintenance and operation of the pipe line, and owns some automobiles which are used for the same purpose All of its activities center around the interstate business of transporting oil by pipe line from Oklahoma to Illinois.

I.

The tax which the state is attempting to enforce under the provisions of Sections 9836 to 9848, Revised Statutes of Missouri 1919, as amended by Laws of Missouri 1921, Extra Session, p. 121, is a privilege, license, or excise tax; that is, it is a tax upon the privilege of doing business.

This was decided by the Supreme Court of Missouri in the case of State ex rel. Marquette Hotel Investment Company v. State Tax Commission, 282 Mo. 213. The Court says, on motion for rehearing (p. 234):

> "A franchise tax is not one levied upon property but one placed on the right to do business. It may be graduated according to the extent of the business done. The act before us contemplates a tax upon the right to do business in accordance with the property actually used in the business."

It was amply shown in the testimony that the company pays general and ad valorem taxes upon its property located in Missouri. The present tax, therefore, is not in lieu of a general property tax; it is an additional burden which is a tax upon the privilege of doing business, and as the business done is strictly interstate business the state is without the power to tax that business.

Although this tax is levied upon the privilege of doing business within the state, it is not based upon the proportion of business done in the state to total business. The tax is levied upon the capital stock and the surplus of the company, not in accordance with the ratio of business done in the state to total business, but in accordance with the ratio which the assets in the state bear to the total assets. If the tax were levied upon that proportion of its capital stock and surplus which the business done within the state bears to the total business, this controversy could never have arisen, for the reason that the state in attempting to levy the tax would find no business done within the state. The proportion of business done within the state to total business would be zero.

But the language of the act is that the tax shall be levied in the proportion which the assets located in Missouri bear to the total assets. While the company does no business in Missouri, 50 per cent of its assets lie within that state, so that if the tax is sustained it will pay a tax upon 50 per cent of its capital and surplus. It is the contention of the State that maintaining an office in the state where directors' meetings are held, and where the president and some other officers have their headquarters, and the operation of trucks and automobiles along the line, and the other various activities described in the evidence, constitute doing business within the state, and

that the company is therefore liable for the payment of the tax, notwithstanding the fact that all of its receipts and earnings come from interstate commerce.

This contention was upheld by the lower court, which ruled that the maintenance of an office and office force described in the evidence and the conducting of other activities shown in the evidence constituted doing business within the state.

II.

The Maintenance of the St. Louis Office.

The lower court based its ruling largely upon the cases of Copper Range Company and Champion Copper Company v. Massachusetts, reported in Cheney Brothers Company v. Massachusetts, 246 U. S. 147 (Rec., p. 44). In the opinion of the lower court it is said, speaking of these cases:

> "In his opinion Mr. Justice Vandeventer made a very helpful and practical analysis of the activities which are held to constitute local business affording basis for a tax of this nature, and pointed out the controlling distinctions. In my opinion that case is decisive of this controversy under the testimony produced at the hearing."

We submit, however, that this ruling of the lower court was based upon a misapprehension. The opin-

ion reported in Cheney Brothers v. Massachusetts, so far as it touches upon the liability of the Copper Range Company and the Champion Copper Company, is very short. In regard to the Copper Range Company the Court says (l. c. 155):

> "This is a Michigan corporation, whose articles of association contemplate that it shall have an office in Boston—it is a holding company and owns various corporate stocks and bonds and certain mineral lands in Michigan. Its activities in Massachusetts consist in holding stockholders' and directors' meetings, keeping corporate records and financial books of account, receiving monthly dividends from its holdings of stock, depositing the money in Boston banks and paying the same out, less salaries and expenses, as dividends to its stockholders three or four times a year. The exaction of a tax for the exercise of such corporate faculties is within the power of the state. **Interstate commerce is not affected.**"

It is clear enough from the above language that the Copper Range Company was not engaged in interstate commerce. It was a holding company which owned stocks, bonds and mineral lands in Michigan, and under these circumstances the Court ruled that the maintenance of its office in Boston, where stockholders' meetings and directors' meetings were held, corporate records, financial records kept, etc., was doing business within the state and was not doing an

interstate business. The lower court, however, seems to have interpreted this language to mean that whenever a company maintains an office in a state for the purposes set out in the opinion it will be subject to a franchise tax. We do not, however, so read the opinion.

In regard to Champion Copper Company, 246 U. S., l. c. 155, the Court says:

> "This is another Michigan corporation which maintains an office in Boston pursuant to a provision in its articles of association. It deposits the proceeds of its mining and smelting business in Michigan in Boston banks and, after paying salaries and expenses, distributes the balance in dividends from its Boston office. The management of its mine is under the control of a general manager in Michigan and he in turn is under the control of the company's directors. The meetings of the latter, which occur several times in a year, are held in the Boston office. At these meetings the directors receive reports from the treasurer and general manager, vote dividends, elect officers and authorize the execution of deeds and the like for lands in Michigan. **These corporate activities in Massachusetts are not interstate commerce and may be made the basis of an excise tax by that state.**"

Clearly the ruling of the Court was, that these companies, not being engaged in interstate commerce and

maintaining offices in Massachusetts for the purposes set out in the opinion, were doing business in Massachusetts. It does not follow, however, that where a company is engaged solely in interstate commerce and maintains an office in a state for the sole purpose of conducting an interstate business, it is subject to an excise or franchise tax by the state. The lower court, we submit, entirely overlooked the distinction between a corporation maintaining an office within the borders of a state for the purpose of conducting an interstate business and one maintaining such an office for purposes apart from and not related to interstate commerce. That this distinction is vital and was in the mind of the Court when the opinion in Cheney Bros. v. Mass. was delivered is obvious from the fact that the Cheney Bros. Co. were held in that opinion to be not liable to the tax although that company maintained an office in Boston. In referring to that company the Court says, after reviewing the activities of the company and the purpose of maintaining its Boston office, l. c. 153:

> "We do not perceive anything in this that can be regarded as a local business, as distinguished from interstate commerce; the maintenance of the Boston office and the display therein of a supply of samples are in furtherance of the company's interstate business and have no other purpose. Like the employment of the salesmen, they are

among the means by which that business is carried on and share its immunity from state taxation." Citing cases.

And the Court continues, referring to certain sales negotiated in Boston of goods located in Connecticut to purchasers in Connecticut:

> "In such cases it doubtless is true that the resulting sale is local to Connecticut, but the action of the Boston office in receiving the order and transmitting it to the home office partakes more of the nature of interstate intercourse than of business local to Massachusetts, and affords no basis for an excise tax in that state (citing cases). We think the tax on this company was essentially a tax on doing an interstate business, and therefore repugnant to the commerce clause."

Thus the Court ruled in this opinion that the Cheney Bros. Co. was engaged in interstate commerce and that, therefore, the maintenance of an office in Boston did not render it liable to an excise tax, but that Copper Range Company and Champion Copper Company were not engaged in interstate commerce and therefore the maintenance of offices by those companies in Boston rendered them liable.

Now it may be said that Cheney Bros. Co. was operating merely a branch office in Boston for the purpose of negotiating sales, whereas Copper Range Company and Champion Copper Company were main-

taining their main offices in Boston. That, however, is not the ground of the decision. That there is no valid ground for the levying of a franchise tax by a state against a company engaged in interstate commerce because it maintains a principal business office within the state is clearly shown by the case (from which we quote below) of Norfolk & Western R. R. Co. v. Pa., 136 U. S. 114. This case was cited with approval in the Cheney Bros. case. If a company is engaged solely in interstate commerce it cannot be taxed by a state in which it maintains an office for the sole purpose of conducting such commerce, and we submit it makes no difference whether this office be for the purpose of holding stockholders' meetings, directors' meetings and general management, or for the purpose of maintaining a sales force within the state.

Norfolk & Western R. R. Co. v. Pennsylvania, 136 U. S. 114.

In this case it appeared that the Norfolk & Western R. R. Co. was a part of a through line extending across the State of Pennsylvania, and that it was engaged in the business of transporting freight and passengers to or from other states out of or into the State of Pennsylvania, or from other states to other states passing through the State of Pennsylvania. It maintained an office in the State of Pennsylvania. The State of Pennsylvania attempted to levy a so-

called license fee for the privilege of maintaining an office or offices in the State of Pennsylvania. The license amounted to one-fourth of a mill on each dollar of capital stock. The Court ruled that the company's business was interstate commerce and then says (l. c. 120):

> "We pass to the second inquiry above stated, viz.: Was the tax assessed against the company for keeping an office in Philadelphia for the use of its officers, stockholders, agents, and employes, a tax upon the business of the company? In other words, was such tax a tax upon any of the means or instruments by which the company was enabled to carry on its business of interstate commerce? We have no hesitancy in answering that question in the affirmative. What was the purpose of the company in establishing an office in the City of Philadelphia? Manifestly for the furtherance of its business interests in the matter of its commercial relations. One of the terms of the contract by which the plaintiff in error became a link in the through line of road referred to in the findings of fact provided that 'it shall be the duty of each initial road member of the line to solicit and procure traffic for the Great Southern Despatch (the name of said through line) at its own proper cost and expense.' Again, the plaintiff in error does not exercise or seek to exercise in Pennsylvania any privilege or franchise not immediately connected with interstate commerce and required for the purposes thereof. Before establishing its

> office in Philadelphia it obtained from the secretary of the commonwealth the certificate required by the Act of the State Legislature of 1874, enabling it to maintain an office in the state. That office was maintained because of the necessities of the interstate business of the company, and for no other purpose. A tax upon it was therefore a tax upon one of the means or instrumentalities of the company's interstate commerce, and, as such, was in violation of the commercial clause of the Constitution of the United States (Gloucester Ferry Co. v. Pennsylvania, 114 U. S. 196, 5 Sup. Ct. Rep. 826; Philadelphia Steamship Co. v. Pennsylvania, 122 U. S. 326, 7 Sup. Ct. Rep. 1118, and cases cited; McCall v. California, 136 U. S. 104 [just decided]).''

In the case of Pembina Consolidated Silver Mining & Milling Company v. Pennsylvania, 125 U. S. 181, this Court was considering a license tax levied by the State of Pennsylvania against the mining company for the privilege of maintaining an office within the State of Pennsylvania. The language of the act was that no foreign corporation, with certain exceptions, ''shall have an office or offices in this commonwealth for the use of its officers, stockholders, agents or employes unless it shall first have obtained from the Auditor General an annual license so to do.'' The tax as against the mining company was sustained for the reason that the company was not engaged in interstate commerce. In the opinion of the Court it

is pointed out that a corporation of one state cannot do business in another state without the latter's consent, with certain exceptions, and in commenting upon the exceptions the Court says (l. c. 186):

> "These exceptions do not touch the general doctrine declared as to corporations not carrying on foreign or interstate business, or not employed by the Government. As to these corporations the doctrine of Paul v. Virginia applies. The Colorado corporation (the mining company) does not come within any of the exceptions, therefore the recognition of its existence in Pennsylvania, even to the limited extent of allowing it have an office within its limits for the use of its officers, stockholders, agents and employes, was a matter dependent upon the will of the state."

And again (l. c. 190):

> "The only limitation upon this power of the state to exclude a foreign corporation from doing business within its limits or hiring offices for that purpose, or to exact conditions for allowing the corporation to do business, or hire offices there, arises where the corporation is in the employ of the Federal Government, or where its business is strictly commerce, interstate or foreign. The control of such commerce, being in the Federal Government, is not to be restricted by state authority."

The above language was cited and commented upon with approval in the case of McCall v. California, 136 U. S. 104, l. c. 112. In that case the State of California was held to be without the power to levy a license tax upon an agent located in San Francisco of a railroad company operating between Chicago and New York, the agent's sole duty in California being the solicitation of business for the railroad.

It seems to be the contention of the defendants that the company is doing business in Missouri because it maintains offices there and because its officers reside there and perform their duties there. This, however, is merely incidental to the conduct of the interstate business. Such a company has to have offices in some state, and, as a matter of course, it pays wages in some state, and the men who work for it live in some state. Of course, a company can be physically doing business, that is, transacting affairs within the confines of a state, but it is not, in contemplation of law, doing an intrastate business from that fact alone. A company which does an interstate business necessarily manages and transacts that business within the confines of the various states. If the contention of the defendants were correct there could be no such thing as a railroad company or a ferry or steamboat company doing an interstate business; the mere fact that such a company has wharves, tracks, linemen, depots, stations and offices within a state would

indicate that it was doing business within the state, that is, as the defendants contend, was doing an intra-state business. Such a contention, in effect, denies the possibility of a common carrier doing an inter-state business, and the contention is amply answered by this Court in the case above cited of Norfolk & Western R. R. Co. v. Pennsylvania, 136 U. S. 114.

III.

The Original Charter of the Company Granted by the State of Maryland.

In the argument in the lower court some stress was laid upon the charter powers of the corporation under the original charter granted to it by the State of Maryland (Record, page 29). This charter was also commented upon in the opinion of the lower court. The Court says (Record, page 43):

> "Judged, then, by the construction placed upon its business and purposes by complainant itself in its own organic law, it has engaged and is now engaged in the various kinds of business enumerated in some or all of the sections above quoted."

To this we reply:

First. The license which was obtained from the State of Missouri before the company began the construction of its pipe line provides that the company

"is from the date hereof duly authorized and licensed to engage in the State of Missouri exclusively in the business of transporting crude petroleum by pipe line" (Record, page 28, Plaintiff's Exhibit C). We do not believe that either the original charter or the license from the State of Missouri is material to the present controversy, but the lower court has laid considerable stress upon both of these documents. However, it appears from them that before undertaking to construct its pipe line through and across the State of Missouri the corporation saw fit to obtain a license from the state to engage exclusively in the business of transporting crude petroleum by pipe line. So far as this license is material, it shows that the company's desire was to transport crude petroleum by pipe line through and across the State of Missouri, and not to engage in any other business.

Second. The powers of the corporation as contained in its original charter issued by the State of Maryland are certainly not taxable by the State of Missouri, unless they are exercised within the state. The decision of any such case necessarily turns upon a question of fact and not of charter powers. For example, in the case of Norfolk & Western Railroad Company v. Pa., 136 U. S. 114, the Norfolk & Western Railroad Company, in all probability, had charter powers broad enough to enable it to do an intrastate business within the State of Pennsylvania.

No comment, however, is made by the Court upon what the charter powers of the company were. The decision turned, as it must always turn, upon the question of fact as to what business the company was actually engaged in. The same thing may be said of the case of Cheney Brothers Co. v. Massachusetts, 246 U. S. 147. That company was held not liable to the payment of an excise tax for the reason that it was engaged entirely in interstate commerce. The Court makes no comment upon the charter powers of Cheney Brothers Co. It is safe to assume, however, that the corporation had sufficient charter powers to enable it to engage in intrastate as well as interstate commerce.

We have seen no case, involving the question of the right of a state to levy a tax claimed to be invalid because affecting interstate commerce, in which the decision turned upon the charter powers of the company taxed.

An individual has the right to engage in any line of business, but he cannot be taxed, except upon such business as he actually engages in. A corporation may be clothed with very broad and ample powers, but it cannot be taxed for the privilege of engaging in any one of them unless it actually does so.

So far as we are aware, the question of the right of a state to levy a privilege or excise tax upon a

foreign corporation on account of activities authorized by its charter, but never exercised within the state, has never been considered by this Court. It is obvious, however, that the decisions in which the right of a state to levy such a tax is considered have all turned upon the question of fact as to the nature of the business actually done.

If the portions of the company's charter which are commented on by the lower court (Rec., p. 42) are examined it will be seen that the company is clothed with broad powers, all of which, however, are more or less germane to its principal business of operating a pipe line. It has the right, for example, "to acquire, take, hold, own, construct, erect, improve, manage and operate, and to aid and subscribe toward the acquisition, construction or improvement of oil wells, gas wells, mine refineries, manufacturing plants, pipe lines, tanks, cars, piers, wharves, steam and other vessels for water transportation, and any other work, property or appliances which may pertain to or be useful in the conduct of any of the business of the corporation."

Now, it is obvious that the State of Missouri could not tax the company for the privilege of operating oil wells in Missouri, for the reason that it operates no oil wells in Missouri or anywhere else. Is this tax to be justified for the reason that the com-

pany has power under its charter to operate refineries and manufacturing plants, though the company operates no refinery or manufacturing plant? Is the fact that the company has the power under its charter to operate steam and other vessels for water transportation of any possible significance in this controversy? It appears clearly enough that the company does not operate any vessels for water transportation. Therefore the State of Missouri cannot levy a tax upon the company for the privilege of operating such vessels. A privilege tax can only be levied on account of some business actually engaged in or some privilege actually exercised. The present tax can only be justified as a tax upon some business which the company conducts intrastate. The quotations from the company's charter set out in the lower court's opinion (Rec., p. 42) throw but small light upon the real question at issue as to the interstate or intrastate character of the company's business.

IV.

The License Obtained From the State of Missouri.

It is also contended that the company conceded that it desired to do business in the state when it filed its charter with the Secretary of State and paid to the state a license fee for the issuance of a certificate under Section 9792, Revised Statutes of Missouri 1919.

The conduct of the company in so doing, however, by no means indicates that the company desired to engage in intrastate commerce as distinguished from interstate commerce. It did desire to be uninterrupted in the construction and operation and maintenance of its pipe line. As that pipe line extends across the State of Missouri, and as the power of eminent domain was considered essential to the construction of the line, the company filed its charter and obtained the certificate mentioned. Now it will not do to say that if the company desired to engage merely in interstate commrece it would not have filed its charter and would not have paid the license fee and would not have obtained this certificate. The answer to this suggestion is threefold:

First. Even if the company did an unnecessary thing, even if it could have come into the State of Missouri and constructed the pipe line without the consent or license of the state, this fact would have no bearing whatever upon the power of the state to levy a tax upon interstate commerce. The question is one of fact, namely, is the company engaged in interstate commerce only? Such a license fee is payable once, and the company might well have paid it rather than engaged in controversy in regard to its right to construct, operate and maintain the pipe line.

Second. In the case of Norfolk & Western R. R. Co. v. Pennsylvania, above cited, the Norfolk & Western Railroad Company had obtained a license to maintain an office in the state. The Court comments upon this fact and says:

> "That office was maintained because of the necessities of the interstate business of the company and for no other purpose."

Now it might be that the Norfolk & Western Railroad Company did an unnecessary thing in obtaining from the Secretary of the Commonwealth a certificate enabling it to maintain its office in the state, but that is immaterial. This case, therefore, is, among other things, authority for the proposition that the mere fact that a company has complied with the state law in obtaining a certificate enabling it to maintain an office in the state does not indicate that it is doing an intrastate business subject to taxation.

Third. Pipe line companies in Missouri have the right of eminent domain (Section 1791, Revised Statutes of Missouri 1919), and under the decision of the Supreme Court of Missouri in Southern Illinois and Missouri Bridge Co. v. Stone, 174 Mo. 1, a foreign corporation which complies with the laws of Missouri applicable to foreign corporations will also have the right of eminent domain. The State of Missouri, of

course, clearly has the right to confer upon a corporation the right of eminent domain for the purpose of enabling it to engage in business as a common carrier engaged in interstate commerce only. The purpose here was to obtain for the Ozark Pipe Line Company the same rights as are conferred by the statutes of Missouri upon domestic corporations of like character.

If the Ozark Pipe Line Corporation were a Missouri corporation it would not be subject to a tax upon interstate commerce. This is clear from the above decisions denying to the state the power to tax the business of interstate commerce. (See, also, Philadelphia and Southern Mail Steamship Company v. Penn., 122 U. S. 326 [cited infra]). The mere fact, therefore, that the company desired to obtain for itself the powers conferred by the Missouri statute by no means indicates that it desired to do any other business than that of interstate commerce.

The filing of the charter of the company with the Secretary of State and the obtaining of a certificate from the Secretary of State in order to be clothed with powers granted by the statutes of Missouri are all in furtherance of the company's interstate business. The company is now clothed with the power of eminent domain, a power which it has obtained in furtherance of its general business enterprise, which is essentially interstate commerce.

V.

No State May Levy a Franchise or Excise Tax Upon a Company Doing Solely an Interstate Business In, Through or Across the State.

That the transportation of oil from one state to another is interstate commerce there can be no question.

> Eureka Pipe Line Company v. Hallanan, 257 U. S. 265, 42 Sup. Ct. Rep. 101;
> United Fuel Gas Co. v. Hallanan, 257 U. S. 277, 42 Sup. Ct. Rep. 105.

That this tax is a license privilege or excise tax has been settled by the Supreme Court of Missouri in the case above cited.

> Marquette Hotel Investment Company v. State Tax Commission, 282 Mo. 213, l. c. 234, 221 S. W. 721.

"A franchise tax is not one levied upon property, but one placed on the right to do business."

This tax is not a mere license for the privilege of maintaining an office in Missouri. Even such a tax would be invalid.

> Pembina Consolidated Mining & Milling Co. v. Pennsylvania, 125 U. S. 181.

But this tax is much more than that. It is a tax upon the privilege of doing business within the state. That such a tax cannot be levied where the business done is wholly interstate is well settled.

In the case of Kansas City, Ft. Scott & Memphis Ry. Co. v. Bottkin, 240 U. S. 227, we find the following:

> "A state cannot lay a tax on interstate commerce in any form, by imposing it either upon the business which constitutes such commerce, or the privilege of engaging in it, or upon the receipts as such derived from it."

In the case of Le Loup v. Port of Mobile, 127 U. S. 640, the Court says (l. c. 648):

> "In our opinion such a construction of the Constitution leads to the conclusion that no state has the right to lay a tax on interstate commerce in any form, whether by way of duties laid on the transportation of the subjects of that commerce, or on the receipts derived from that transportation, or on the occupation or business of carrying it on, and the reason is that such taxation is a burden on that commerce and amounts to a regulation of it, which belongs solely to Congress. This is the result of so many recent cases that citation is hardly necessary." (Numerous cases are then cited.)

In the case of Philadelphia & Southern Mail Steamship Company v. Pennsylvania, 122 U. S. 326, this

Court was considering a tax levied upon the gross receipts of the steamship company, which was engaged in interstate and foreign commerce. The tax was levied by the home state of the corporation under whose laws it was incorporated. It was ruled that the tax was invalid. The opinion of the Court considers the nature of the tax there in question. The Court says (l. c. 342):

> "It certainly could not have been intended as a tax on the corporate franchise because by the terms of the act it was laid equally on the corporations of other states doing business in Pennsylvania. If intended as a tax on the franchise of doing business, which in this case is the business of transportation in carrying on interstate and foreign commerce, it would clearly be unconstitutional. It was held by this Court in the case of Gloucester Ferry Company v. Pennsylvania, 114 U. S. 196, that interstate commerce carried on by corporations is entitled to the same protection against state exactions which is given to such commerce when carried on by individuals. In that case the tax was laid upon the capital stock of a ferry company incorporated by New Jersey and engaged in the business of transporting passengers and freight between Camden in New Jersey and the City of Philadelphia."

The Court then further comments upon the deci-

sion in the Gloucester Ferry Company case and adds (l. c. 344):

> "It is hardly necessary to add that the tax on the capital stock of the New Jersey company in that case was decided to be unconstitutional because as the corporation was a foreign one the tax could only be construed as a tax on the privilege or franchise of carrying on its business and that business was interstate commerce.
>
> "The decision in this case and the reasoning on which it is founded, so far as they relate to the taxation of interstate commerce carried on by corporations, apply equally to domestic and foreign corporations. No doubt the capital stock of the former, regarded as inhabitants of the state, or their property, may be taxed as other corporations and inhabitants are, provided no discrimination be made against them as corporations carrying on foreign or interstate commerce so as to make the tax in effect a tax on such commerce, **but their business as carriers in foreign or interstate commerce cannot be taxed by the state under the plea that they are exercising a franchise.**"

VI.

Even Where a Company Does an Intrastate Business, Though Such Business Is Taxable, Nevertheless, if the Law Is so Framed as to Include or Compel Payment of a Tax on Interstate Commerce Also, It Will Be Void.

In what is said above we have confined ourselves to the citation of cases in which the company taxed was,

like the Ozark Pipe Line Company, doing nothing but an interstate business. Most of the decided cases, however, deal with companies doing both an interstate and an intrastate business. In such case the state has the power to tax the intrastate business. But even in such case where the tax is so levied as to include, or compel payment of, a tax upon the interstate business it will be void.

Oklahoma v. Wells-Fargo & Co., 223 U. S. 298;
Pullman Company v. Kansas, 216 U. S. 56;
Western Union Telegraph Co. v. Kansas, 216 U. S. 1;
International Paper Company v. Massachusetts, 246 U. S. 135;
Crew Leavick Co. v. Pennsylvania, 245 U. S. 292;
Looney v. Crane Co., 245 U. S. 178;
Ludwig v. Western Union Telegraph Co., 216 U. S. 146;
Locomobile Co. of America v. Massachusetts, 246 U. S. 146.

VII.

We are not here considering a tax which, though in form a privilege tax, is, in substance and effect, a general property tax; nor are we considering the form or method which a privilege tax upon intrastate business may lawfully assume.

The defendants below cited several cases to the Court which we think are clearly distinguishable.

As those cases will probably also be cited here, we desire briefly to comment upon some of them. In several cases so cited the Court was confronted with a tax which was levied upon a right of way, or which was, though in form a license tax, actually assessed in lieu of a tax upon the right of way.

For example, in Postal Telegraph Cable Company v. Adams, 155 U. S. 688, it was held that a state privilege tax of a certain amount per mile of wires operated within the state, imposed on all telegraph companies therein operating, in lieu of all other state, county and municipal taxes, and amounting to less than the ordinary ad valorem tax, is substantially a mere tax on property, to which a foreign corporation operating within the state is subject, notwithstanding it is engaged in interstate commerce.

The distinction between a privilege or excise tax and a tax upon property is vital. The state can levy a tax upon all property within its borders whether that property is used in interstate commerce or not. The state may tax such property directly or may resort to other methods and tax the company on a mileage basis. If the tax is in substance and effect a property tax it will be sustained, provided, of course, it is fair and reasonable and is not so figured as to violate any fundamental property rights.

Here we are not concerned with this question. The State of Missouri, as stated above, does levy and col-

lect a tax upon the right of way of the Ozark Pipe Line Corporation, considered as property. The question here is, has it a right to levy a tax upon the privilege of doing the business which the Ozark Pipe Line Corporation does? Counsel cited the following language (l. c. 696):

> "But property in a state belonging to a corporation, whether foreign or domestic, engaged in foreign or interstate commerce, may be taxed, or a tax may be imposed on the corporation on account of its property within a state, and may take the form of a tax for the privilege of exercising its franchises within the state, if the ascertainment of the amount is made dependent in fact on the value of its property situated within the state (the exaction, therefore, not being susceptible of exceeding the sum which might be leviable directly thereon), and if payment be not made a condition precedent to the right to carry on the business, but its enforcement left to the ordinary means devised for the collection of taxes."

Now, it will be noticed that the Court says that in such a cas the exaction is so levied that it cannot exceed the sum which might be levied directly, that is, the method of figuring the tax is such that the company cannot suffer by reason of the fact that the tax is in the form of a privilege tax instead of in the form of a direct tax upon property. In

other words, it is in substance and fact a direct ad valorem tax upon property, and, as the company in that case, as stated by the Court, paid no other direct ad valorem tax upon its property, it could not complain on account of the form of the tax in question, unless it could show that the result was that a greater amount was levied than that which would have been levied if the tax had been a direct ad valorem tax. The cases, therefore, which consider a tax levied in lieu of an ad valorem property tax are not in point.

Another line of cases cited deals with franchise taxes levied on account of intrastate business where a company is engaged in both interstate and intrastate business. In these cases the amount of the tax may be arrived at in different ways according to the various provisions of the statutes, but the cases are equally not in point for the reason that there is no effort here to levy a privilege tax upon a company on account of any intrastate business, for the appellant does no such business.

For example, counsel cited Hump Hair Pin Manufacturing Company v. Emmerson, 258 U. S. 290, and quoted as follows (l. c. 294):

> "As coming within this latter description, taxes have been so repeatedly sustained where the proceeds of interstate commerce have been used as one of the elements in the process of

determining the amount of a fund (not wholly derived from such commerce) to be assessed, that the principle of the cases so holding must be regarded as a settled exception to the general rule."

The clause in parentheses is, of course, the controlling clause. The cases cited are simply concerned with the validity of various methods adopted by the states in ascertaining the value of intrastate business as compared with total business. Where it is conceded that the company does an intrastate business and that such business is taxable, the only question is as to the propriety of the method adopted in taxing it. In the present case, however, there is nothing for the state to levy a privilege or excise tax on, for there is no intrastate business done and the company does not have to obtain from Missouri the privilege of doing an interstate business, nor can it be taxed by the State of Missouri on such business.

Respectfully submitted,

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APPENDIX.

The following sections of the Revised Statutes of Missouri are referred to in the argument. We insert so much thereof as is material.

Sec. 9792. **Foreign Company to File Articles Where—Shall Contain What—Fee—Certificate, etc.**—Every company incorporated for the purpose of gain under the laws of any other state, territory or country, now or hereafter doing business within this state, shall file in the office of the Secretary of State a copy of its charter or articles of association, duly authenticated by the proper authority, together with a sworn statement under its corporate seal, particularly setting forth the business of the corporation which it is engaged in carrying on, or which it proposes to carry on in this state; and the principal officer or agent in Missouri shall make and forward to the Secretary of State, with the affidavits required, a statement sworn to of the proportion of the capital stock of said corporation which is represented by its property located and business transacted in Missouri, which statement shall set out the location of its principal office or place in this state for the transaction of its business, where legal service may be obtained upon it. Such corporation shall be required to pay into the state treasury upon the proportion of its capital stock represented by its property and business in Missouri, incorporating tax and fees equal to those required of similar corporations formed within and under the laws of this state, with an addition of ten dollars as a fee for issuing the license authorizing it to do business in this state. Upon compliance

with these provisions by the corporation the Secretary of State shall give a certificate that said corporation has duly complied with the law, and is authorized to engage only in the business set out in the statement filed with its charter. Said certificate shall state the entire amount of its capital; the proportion thereof which is represented in Missouri, and the business which it is authorized to carry on; and the location of its principal office or place of business in this state, and such certificate shall be taken by all courts in this state as evidence that said corporation is entitled to all the rights and benefits of the laws relating to foreign corporations for the time set forth in its original charter, unless this shall be for a greater length of time than is contemplated by the laws of this state, in which event the duration shall be reckoned from the date of its incorporation to the limit of time set out in the laws of this state. * * *

Sec. 1791. **Lands May be Condemned, When—Petition, etc.**—In case land or other property is sought to be appropriated by any road, railroad, telephone, telegraph or any electrical corporation organized for the manufacture or transmission of electric current for light, heat or power, or any oil, pipe line or gas corporation engaged in the business of transporting or carrying oil or gas by means of pipe lines laid underneath the surface of the ground, or other corporation, created under the laws of this state for public use, and such corporation and the owners cannot agree upon the proper compensation to be paid, or in case the owner is incapable of contracting, be unknown or be a nonresident of the state, such corporation may apply to the Circuit Court of the county

where said land or any part thereof lies, or the Judge thereof, in vacation, by petition, setting forth the general direction in which it is desired to construct their road, railroad, telephone or telegraph line or electrical line, oil, pipe line or gas line over or underneath the surface of such lands, a description of the real estate or other property which the company seeks to acquire, the names of the owners thereof, if known, or, if unknown, a pertinent description of the property whose owners are unknown, and praying the appointment of three disinterested freeholders, as commissioners, or by a jury, to assess the damages which such owners may severally sustain in consequence of the establishment, erection and maintenance of such road, railroad, telephone or telegraph line, or electrical line, oil, pipe line or gas line over or underneath the surface of such lands.

IN THE

SUPREME COURT OF THE UNITED STATES.

OZARK PIPE LINE CORPORATION,
Appellant,

v.

ROY MONIER and GEORGE M. HAGEE, Constituting the State Tax Commission of the State of Missouri, and JESSE W. BARRETT, Attorney-General of the State of Missouri,
Appellees.

No. 575.

Appeal from the District Court of the United States for the Western District of Missouri.

REPLY BRIEF FOR APPELLANT.

The principal contention of the appellees is that the office of the company in St. Louis is its main office, and for this reason the appellees attempt to distinguish this case from the case of Norfolk & Western Railroad Company v. Pennsylvania, 136 U. S. 114. We believe, however, that it is well settled that a company which is doing an interstate business only is not subject to an occupation tax by any state on

account of the maintenance of the principal office of the company within such state. This is true whether the state be the one where the company is incorporated or any other state. The case of Philadelphia & Southern Mail Steamship Company v. Pennsylvania, 122 U. S. 326, ruled that such a tax could not be levied by the state in which the company was incorporated. Many corporations certainly, and probably the majority of corporations, have their principal office in the state where they are incorporated, and if they do an interstate business only they are not subject to privilege taxes levied by the state. The principle, therefore, that the state of domicile of the corporation cannot levy a privilege tax upon such corporation is itself sufficient to indicate that the maintenance of the principal office within the borders of the state will not subject such a corporation to the payment of a privilege or excise tax.

In commenting upon the case of Norfolk & Western Railroad Company v. Pennsylvania, 136 U. S. 114, the appellees state that the main office of the company was at Roanoke, Virginia, and that the office at Philadelphia was not the main office. The appellees add that the business of the railroad was conducted and directed from the main office at Roanoke, Virginia. The opinion, however, does not indicate

this. The finding of facts of the lower court is set out at page 116. The fourth finding is as follows:

> "From July 1, 1883, to July 1, 1885, it had an office in this commonwealth for the use of its officers, stockholders, agents and employes. The main office is at Roanoke, Virginia."

By the term "main office" the Court may well have intended the office required by law to be maintained in the state of the corporation's domicile, to wit, Virginia. The finding of facts shows that the Philadelphia office was for the use of the company's officers, stockholders, agents and employes. The fact that it was for the use of the officers of the company would indicate that the business was directed there, and the fact that the office was for the use of both the officers and stockholders would indicate that it was the principal office of the company. Furthermore, there is nothing in the opinion which in any way intimates that the ground of the decision is that the office in Pennsylvania was merely a branch office and that the company would have been taxable if said office had been the principal office of the company. We do not believe that this case can be distinguished from the case at bar upon the theory that the office maintained by the Norfolk & Western Railroad Company was merely a branch office, whereas the office maintained by the appellant in St. Louis is

its principal office. In this connection, we further call the Court's attention to the following cases:

Clyde S. S. Company v. City Council of Charleston, 76 Fed. Rep. 46: This is a decision by the Circuit Court of the District of South Carolina. It is, however, interesting on account of its review of several decisions by this Court, to which we have already called the Court's attention in our former brief. We quote the syllabus:

> "A foreign corporation, whose vesse'ls, while en route between the ports of two different states, stop at a port of a third state, is not liable for a license tax at that port, because it there leases a wharf or landing; has plant and machinery for the taking in and discharge of freight and passengers; engages stevedores and longshoremen, who are in its sole employment; has there an agent and subordinate clerks, an office, with furniture, books and appliances; and keeps a bank account and occasionally purchases supplies there—since all such operations are an essential and integral part of its interstate commerce business."

People of the State of New York ex rel. Pennsylvania Railroad Company v. Wemple, 138 New York 1, 19 L. R. A. 694: In this case it was held that the State of New York was without authority to levy a tax on the franchise or business of the Pennsylvania Railroad Company, which company was engaged in

no business within the State of New York other than an interstate business. The evidence showed that the lines of the Pennsylvania Railroad Company were connected with the State of New York only by a ferry across the Hudson River and that the company had within the State of New York terminal facilities, wharves, piers, docks and buildings. The Court puts the question thus:

"We come, therefore, to the crucial question in the case, Can the State of New York tax the relator, a foreign corporation, upon its business carried on in this state, which is exclusively the business of interstate commerce? The question stated in another form, is, May a state tax a foreign corporation whose business in such state is exclusively that of interstate commerce, for the privilege of transacting that business here, because, as we have held, this is the essential nature of the tax under the Act of 1880."

The Court then considers numerous decisions of this Court, including the case cited by the appellees, of Maine v. Grand Trunk Railroad Company, 142 U. S. 217, and reaches the conclusion that the tax attempted to be levied was invalid.

The exemption of interstate commerce from occupation taxes levied by the states necessarily extends to all of the means and implements used in such commerce. There can be no question that such a tax cannot be sustained upon the ground that the company

owns property within the state. Such property is, of course, taxable, but its ownership by the company cannot be made the basis for a privilege or excise tax. It is also well settled that the maintenance of an office for the agents of the company within the state cannot be made the basis for the levying of such tax.

But the appellees argue that if the principal office of the company is maintained within the state these principles do not apply, and that the maintenance of such office by the company can be laid hold of by the state as a ground for the levying of a privilege tax against it. The principle, however, which allows a corporation engaged solely in interstate commerce to own property and maintain offices within the confines of the state without being subjected to occupation taxes will clearly allow the maintenance of a principal office within the state. The principal office is just as much concerned with the business of the company as any branch office or any property owned by the company—in fact it is more so. The president of the company is just as much engaged in interstate commerce as is an employe who operates a pump. The management and direction of the company's business is just as much a part of interstate commerce as is the operating of the machinery at pumping stations. This Court certainly has never recog-

nized in any reported decision any such exception to the general rule, an exception which, if recognized, would render every corporation engaged solely in interstate commerce liable to the payment of a tax upon such commerce by the state in which it maintained its principal office. If interstate commerce is to be effectually protected from occupation taxes levied by the states, such protection must extend to the operation of the principal office of the company. There is no logical reason why it should not do so.

The appellees state, at page 29 of their brief, as follows:

> "The amount or extent of business done within the state is immaterial. If it does any intrastate business at all it is subject to the Franchise Tax Act of Missouri."

The position of the appellee is, therefore, that if they can persuade the Court that the appellant does any business at all of an intrastate character it will be subject to a franchise tax. In other words, if it is doing business within the state to maintain a truck, which operates for the maintenance of the pipe line, or to make purchases for the pipe line within the state, or to maintain an office in the City of St. Louis, then the company must pay a franchise tax upon a percentage of its entire capital stock and surplus measured by its property within the state. This tax,

it is to be remembered, is an excise, privilege or occupation tax upon the franchise of the company. It is not a tax for the operation of a truck; such a tax the company pays. The evidence shows that automobile license taxes are paid by the company.

Nor is it a tax which is levied in terms for the privilege of maintaining an office within the state. In this respect the act is far more drastic and far-reaching than were the acts considered in the cases of Norfolk & Western Railroad Company v. Pennsylvania, 136 U. S. 114, and Pembina Consolidated Silver Mining & Milling Company v. Pennsylvania, 125 U. S. 181.

The effort of the taxing authorities here is to find some one or more activities, any activities, engaged in by the company, which may be called intrastate commerce, and thereupon to levy a tax, not upon such activities alone, but upon a proportion of the franchise of the company measured by the property owned by the company in Missouri. If this company could be shown to transport at times single barrels of oil from one point in Missouri to another point in Missouri, it would be doing an intrastate business, but the tax would be out of all proportion to the intrastate business done. The fact is, however, that the company engages in no such business, and the state, therefore, tries to persuade the Court that the maintenance of an office in Missouri is doing an intrastate business or that the operating of a telegraph or telephone line

along the right of way, and the operating of automobile trucks to carry men and material for the purpose of operating and maintaining the pipe line is intrastate business. Such activities, however, are purely incidental, and even if the law were that such business constituted intrastate commerce, it would be a grossly unfair and inequitable thing to justify on that account a tax against the general franchise of the company based upon the amount of property owned in the state. Fifty per cent of the company's property lies within the State of Missouri. One hundred per cent of its revenues are derived from interstate commerce. It is clear enough that the franchise which the state attempts to tax here is the right to engage in interstate commerce. That right is a valuable right which is not subject to privilege taxes by the state, and it is certainly contrary to reason and authority to say that that right may become subject to taxation if the company engages in any activities within the state which are of such a nature that they might be regarded as intrastate business were they not inseparably connected with the business of the company, which is that of interstate commerce.

The amount of a tax should have some reference to the value of the thing taxed. The right to tax an auto truck is one thing and the right to tax the general franchise of a company engaged in interstate com-

merce for the reason that it operates an auto truck is quite another and different thing.

The appellees cite the case of Pennsylvania Railroad Company v. Knight, 192 U. S., page 28. In this case it was held that the operating of cabs which conduct passengers to and from a railroad station is no part of interstate commerce and is, therefore, subject to taxation. In the opinion the Court says:

> "We are of the opinion that the cab service is an independent local service, preliminary or subsequent to any interstate transportation."

The Court also points out that:

> "Many things have more or less close relation to interstate commerce which are not properly to be regarded as a part of it."

There are two points to be noted here:

First. The tax was a tax upon the operation of the cab itself. The operation of the cab was not asserted by the State to be a reason for the levying of a franchise tax upon some railroad company or other public service corporation.

Second. The cab service was a thing which, in its nature, was quite separate from and independent of the conduct of interstate commerce, but in the present case all of the activities engaged in by the com-

pany are an inseparable part of the business of operating and maintaining the pipe line.

Interstate commerce, as this Court has ruled and as the appellees point out, is a practical conception. If the tax in question is in its practical effect and operation a burden upon interstate commerce, it is void. Now, there can be no question that this tax in its practical effect and operation is a distinct burden upon interstate commerce. Even if the company did some intrastate business, the amount of property owned in Missouri can have no possible relation to the amount of intrastate business done, and to ask this Court to sustain the tax upon the theory that the maintenance of auto trucks for the sole purpose of operating and maintaining the pipe line is doing business within the state, is tantamount to requesting the Court to sustain a tax, upon interstate commerce which is large in amount on account of a supposed operation within the state which is trivial in amount and purely incidental in character.

Furthermore, it is well settled in cases which we have previously cited that the maintenance of a railroad station or of wharves and depots within the state by a company doing an interstate business only will not subject the company maintaining them to an occupation tax by the state. Now, if is well known that at every railroad station and at every wharf and de-

pot there are trucks used, and station agents and porters are employed, but all of such activities are incidental to the commerce in which the company is engaged.

The appellees call the Court's attention to the case of Maine v. Grand Trunk Railroad Company, 142 U. S. 217. In that case the tax was levied upon the company

> "for the privilege of exercising its franchises within the State of Maine."

As we read the case, it is one of a line of numerous decisions holding that where a company does both interstate and intrastate business, the state has the right to tax the intrastate business. The opinion in the case was chiefly concerned with the method of determining the tax and not with the right to levy any tax at all.

The Supreme Court of New Jersey, we believe, placed a wrong interpretation upon the case of Maine v. Grand Trunk Railway Company, supra, in deciding the case of Tide Water Pipe Company v. State Board of Assessors, 57 N. J. 516. The New Jersey Court interpreted the decision in the case of Maine v. Grand Trunk Railway Company as ruling that a state could levy an occupation tax upon a company doing a wholly interstate business, but the

decision in the Grand Trunk Railway Company case was not to that effect. As we have above pointed out the statute of Maine levied a tax for the privilege of exercising the franchises of the company within the State of Maine. Now, there is no question that where a company does an intrastate business such business may be taxed by the state. In such cases the only question arising is as to the validity of the method used in determining the tax, and that was the question which was before this Court in the case of Maine v. Grand Trunk Railway Company, 142 U. S. 217. In the case of the Tide Water Pipe Company v. State Board of Assessors, 57 N. J. 516, the Court was considering the right of the State of New Jersey to levy a tax upon a pipe line company which did a purely interstate business, and the Court says that the case of Maine v. Grand Trunk Railway Company was on all fours with the case then before it. In so ruling, the Supreme Court of New Jersey clearly erred and misinterpreted the decision in the Grand Trunk Railway Company case.

We would further call the Court's attention to the following provisions of the Revised Statutes of Missouri, 1919:

"Taxation of Franchises.

"Section 12999. To be assessed, how—tax due and payable, when.—The franchises (other than

the right to be a corporation) of all railroad, street railroad, bridge, telegraph, telephone, conduit, water, electric light and gas companies, and of all other similar corporations owning, operating and managing public utilities, and of all quasi public corporations possessing special and peculiar privileges and authorized by law to perform any public service (except corporations formed for religious, educational and benevolent purposes) shall be assessed for the purposes of taxation at the same time and in the same manner as other property of such corporation is now or may hereafter be required to be assessed; and there shall be levied upon the assessed value of such franchise the same rate of taxation as may be levied upon other property of such corporation. Said tax shall be due and payable, and like proceedings may be had to collect the same, and when collected it shall be disposed of in the same way as the taxes imposed upon the other property of such corporation (R. S. 1909, Section 11551).

"Section 13000. Valuations, how fixed and by whom.—The State Board of Equalization in cases of railroads, street railroads, bridges, telegraph, telephone companies and all other corporations whose property the State Board of Equalization is now or may hereafter be required to assess, and the County Assessor, in case of the other quasi public corporations referred to in the preceding section, shall ascertain, fix and determine the total value for taxable purposes of the entire property of such corporation, tangible and in-

> tangible, in this state, and shall then assess the tangible property and deduct the amount of such assessment from the total valuation and enter the remainder upon the assessment list or in the Assessor's books, under the head of 'all other property' (R. S. 1909, Section 11552)."

In the present case the evidence shows that the appellant pays ad valorem taxes levied upon property. That tax is not levied upon the right of way considered at the value of farm property. It is levied upon the right of way considering its value as such. The company has always acquiesced in this tax. The tax in question here, however, is an additional burden placed upon the occupation in which the company is engaged, and we submit cannot be sustained as against any corporation doing solely an interstate business.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1924.

OZARK PIPE LINE CORPORATION, *Appellant*,

vs.

ROY MONIER and GEORGE M. HAGEE, constituting the State Tax Commission of the State of Missouri, and JESSE W. BARRETT, Attorney-General of the State of Missouri, *Appellees*.

No. 575.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

BRIEF OF THE ARGUMENT FOR APPELLEES.

STATEMENT.

The president, two vice-presidents, secretary, treasurer, general manager, tax commissioner, bookkeepers, stenographers and other employees maintain their offices and headquarters in their offices in

St. Louis, Missouri, where local and long distant telephones are maintained and the name of the company appears on the doors of said offices. The secretary is there in charge of the records and books of account; the stock certificate books of the company, sales and transfers of stock made by the company are issued from that office where record is made and kept thereof. The treasurer has custody of the cash of the company which maintains its accounts on deposit in St. Louis (Record p. 19); none of the directors or officers of the company are in Maryland and, with the exception of one director living in New York, the other directors and officers live in St. Louis (Record p. 27). All the pay checks are made out at the St. Louis office and distributed therefrom (Record p. 26). The office in Maryland where its corporate life arose, referred to as the home office, is merely an office required by the statutes of that state where legal service upon the company may be had, and is occupied only by an agent of the corporation (Record, pp. 18-19).

In addition to the above the company purchases supplies within the state; employs labor within the state; maintains and operates telephone and telegraph lines and purchases supplies and equipment therefore in the state; maintains and operates automobiles and trucks within the state for the purpose of transporting men and material. The mechanical work, maintenance and repairs of said trucks are

made at local garages in the state wherever most convenient (Record pp. 25-26); acquires rights-of-way, both by purchase and condemnation under its right of eminent domain granted to it by the State (Record p. 26). Frequent damage cases arise by reason of broken and leaking pipe lines which result in overflowing and damaging the lands adjacent thereto. Settlements and adjustments thereof are effected both in and out of the state courts (Record, p. 21). Material and labor are assembled at the broken points and repairs made, the material necessary therefor being kept nearby (Record, p. 20).

At the office in Oklahoma are stationed the superintendent of operations, his assistants, the master mechanic, chief engineer, gaugers and station employees, all of whom are directed in their duties by the officers of the company from their office in St. Louis, Missouri (Record, pp. 19-20).

In addition to the foregoing activities in the State of Missouri, the plaintiff maintains telephone and telegraph lines over which they transmit telegrams and telephone messages (Record, p. 25).

The statutes forming the basis and relating to this cause are correctly set out in appellant's brief (pp. 17-38).

The question presented to the lower court for determination, as set out in the pleadings and evidence, was whether or not the appellant, Ozark Pipe Line Corporation, a foreign corporation, and

a common carrier, engaged, among other things, in transporting crude oil or petroleum from the State of Oklahoma across the State of Missouri to a point in Illinois, is "doing business" in this State, under the terms of the Franchise Tax Act set out in appellant's brief (pp. 17-38).

It was conceded in the lower court, and is likewise conceded here, that if this corporation is and was engaged *solely* in interstate commerce and is and was not "doing business" in Missouri, as above stated, that it is not subject to the payment of a Franchise Tax in Missouri. On the other hand, if it is and was "doing business" in Missouri within the purview of the aforesaid Franchise Tax Statutes, it is subject to a Franchise Tax based upon "that proportion of its entire capital stock and surplus that its property and assets in this State bear to all its property and assets wherever located." (Section 9836, R. S. 1919; as amended, Laws of Missouri, 1921, page 121, as set out in appellant's brief, pp. 29-30.)

The trial court, after a full hearing, found the facts to be that appellant was "doing business" in Missouri, and thereupon dismissed its bill. From this decree plaintiff appealed.

POINTS AND AUTHORITIES.

I.

INTERSTATE COMMERCE DEFINED.

Interstate commerce is a "practical conception," and the tax in question to be valid must not, in its *practical effect* and *operation*, burden interstate commerce.

Eureka Pipe Line Company vs. Hallanan, 257 U. S. 265, l. c. 272;

Hump Hairpin Manufacturing Company vs. Emmerson, 258 U. S. 290, l. c. 295;

St. Louis S. W. Ry. vs. Arkansas, 235 U. S. 350, l. c. 362.

II.

CORPORATIONS DOING BOTH INTERSTATE AND INTRASTATE COMMERCE MAY BE REQUIRED TO PAY A FRANCHISE OR EXCISE TAX.

While a state may not use its taxing power to regulate or burden interstate commerce, on the other hand, it is settled that a state excise tax which affects such commerce, not directly but only indirectly, and remotely, may be entirely valid, where it is clear that it is not imposed with the covert purpose or with the effect of defeating Federal Constitutional rights.

Hump Hairpin Manufacturing Company vs. Emmerson, 258 U. S. 290, l. c. 295;

Maine vs. Grand Trunk R. Co., 142 U. S. 217, l. c. 227-28;

U. S. Express Co. vs. Minnesota, 223 U. S. 335, l. c. 344-5, 7-8;

Baltic Mining Co. vs. Massachusetts, 231 U. S. 68, l. c. 83-88;

Kansas City, M. & B. R. Co. vs. Stiles, 242 U. S. 111, l. c. 118-120;

Kansas City, etc., Ry. vs. Kansas, 240 U. S. 227, l. c. 231-35;

U. S. Glue Co. vs. Oak Creek, 247 U. S. 321, l. c. 326-29;

Schwab vs. Richardson, 44 Supreme Court Reporter, No. 4 (December 15, 1923) 60, l. c. 62.

III.

THE MISSOURI FRANCHISE TAX ACT.

This act has been held by this Court not to be a burden on interstate commerce.

St. Louis-San Francisco Ry. vs. Middlekamp, 256 U. S. 226, l. c. 231.

IV.

"DOING BUSINESS" DEFINED.

What is "doing business" by a foreign corporation in a State other than that of its incorporation? The answer to this question constitutes the sole controversy presented here.

The evidence shows and the trial court found that the plaintiff maintains its principal office in Missouri, in the City of St. Louis, where it keeps its stock certificate books, books of account, financial reports, bank accounts, pays all the employees, both within and without the state, purchases supplies within the state, employs labor within the state, maintains and operates telephone and telegraph lines and purchases supplies and equipment therefor in this state, acquires rights-of-way both by purchase and condemnation under its right of eminent domain granted to it by the state. It is constantly entering into and executing contracts for the transportation of crude oil, and of employment and purchases, and has frequent damage cases by reason of broken and leaking pipe lines which result in overflowing and damaging the lands adjacent thereto. Settlements and adjustments of such damages are effected both in and out of the courts of this state. Material and labor are assembled at the broken points and repairs made.

The vice-president, secretary, treasurer and other officers maintain their offices and headquarters in their offices in St. Louis, where telephones are maintained and the name of the company appears on the doors of said offices. Stockholders and directors meetings are held there. All certificates for the receipt of oil for transportation are sent to the St. Louis office where the revenue for said transportation is figured and entered of record. The tariff rates are also kept there and in fact the entire business of the corporation is managed and directed from the St. Louis office.

The court remarked that these facts were not traversed and were not susceptible of contradiction in any substantial particular (Record, p. 44).

In view of the foregoing evidence and finding of facts and the following decisions, appellees contend that the decree of the lower court should be affirmed.

Cheney Bros. Co. vs. Massachusetts, 246 U. S. 147, l. c. 152-8;

Knights Templars Indemnity Co. vs. Jarman, 187 U. S. 197, l. c. 204;

Horn Silver Mining Co. vs. New York, 143 U. S. 305, l. c. 317;

Board of Trade vs. Hammond Elevator Co., 198 U. S. 424, l. c. 441-2;

Diamond Glue Co. vs. U. S. Glue Co., 187 U. S. 611, l. c. 613;

Connecticut Mutual Life Insurance Co. vs. Spratley, 172 U. S. 602, l. c. 610-11;
Mutual Reserve Life Insurance Co. vs. Birch, 200 U. S. 612.

For the convenience of the court we set out, in appendix hereto, a list of citations to various state court decisions in which they recite facts held by them to constitute "doing business," by foreign corporations within their respective states.

V.

FINDINGS OF FACT.

A finding of fact by a chancellor, who heard the witnesses, will not be reversed, except in a clear case

Unkle vs. Wills, 281 Fed. 29, l. c. 36;
United States vs. United Shoe Mach. Co., 247 U. S. 32, l. c. 53;
Butte and Superior Co. vs. Clark-Montana Co., 249 U. S. 12, l. c. 30;
Fay vs. Hill, 249 Fed. 415, l. c. 418;
Hamlin et al. vs. Grogan, 257 Fed. 59, l. c. 60.

VI.

BURDEN OF PROOF.

The burden of proof rests upon appellant.

Maxwell Land Grant Co. vs. Dawson, 151 U. S. 586, l. c. 604.

ARGUMENT.

I.

Interstate commerce is held by this Court to be "a practical conception," and that a state tax levy upon a foreign corporation doing business within a state, to be valid, must not, in its *practical effect* and *operation*, burden interstate commerce.

Eureka Pipe Line Co. vs. Hallanan, 257 U. S. l. c. 272.

II. III.

Applying this rule in the case at bar, it will be found, it is submitted by appellees, that the Act in question is not a "burden on interstate commerce" in its *practical effect*, as defined by this Court. The tax is not in anywise based upon receipts of the plaintiff from interstate commerce and the amount thereof is not made to fluctuate with the volume or value of the business done, nor does it apply to the value or use of any property belonging to the appellant located beyond the limits of the State of Missouri, nor to the occupation or business of carrying on interstate commerce. As a matter of fact, this Court has held that the Missouri Franchise Tax Act in question is not a burden on interstate commerce.

St. Louis-San Francisco Ry. vs. Middelkamp, 256 U. S. l. c. 231.

IV.

The question here for determination, is and was the appellant engaged in "doing business" in Missouri within the purview of the Missouri Franchise Tax Law?

At the outset we wish to call the Court's attention to the interpretation put upon the nature and character in respect of its business done in Missouri by the appellant itself.

Section 9792, R. S. of Mo., 1919, as set forth in the appendix of appellant's brief, page 75, requires that:

> "Every company incorporated for the purpose of gain under the laws of any other state, territory or country, now or hereafter doing business within this state, shall file in the office of the secretary of state a copy of its charter or articles of association, duly authenticated by the proper authority, together with a sworn statement under its corporate seal, particularly setting forth the business of the corporation which it is engaged in carrying on, or which it proposes to carry on in this state; and the principal officer or agent in Missouri shall make and forward to the secretary of state, with the affidavits required, a statement sworn to of the proportion of the capital stock of said corporation which is represented by its property located

> and business transacted in Missouri, which statement shall set out the location of its principal office or place in this state for the transaction of its business, where legal service may be obtained upon it."

In pursuance of its intent and desire to do business in Missouri, under the foregoing statute, the appellant filed in the office of the Secretary of State of the State of Missouri, on or about the 5th day of January, 1920, an affidavit executed by Mr. T. F. Lydon, then its principal officer in Missouri, seeking permission to do business in Missouri. In this affidavit it is recited:

> "That the amount of capital stock of said corporation is $10,400,000.00 and the proportion of the capital stock of said corporation which is represented by its property located and business transacted in the State of Missouri is $5,319,201.90, * * *."

and further recited:

> "That the principal office of said corporation or place of transaction of its business in the State of Missouri is located in the Arcade Building, 8th and Olive Streets, St. Louis, Missouri. (Defendant's Exhibit 1. Record, p. 40.)

Attention is here called to an error in the abstract of the record (p. 40) in referring to this Exhibit as "Plaintiff's Exhibit 1." It should read "Defendant's Exhibit 1."

Subsequently, on or about the 23rd day of October, 1920, appellant increased its capital stock, and thereafter, on or about the 17th day of August, 1921, filed in the office of the Secretary of State of the State of Missouri its affidavit stating:

> "That the present total authorized capital stock of said corporation is $30,000,000.00; that the amount of property and business of said corporation in the State of Missouri is $12,720,000.00; that said corporation has previously qualified in the State of Missouri for $5,319,201.91, and that $7,400,798.09, in addition thereto, is now represented in the State of Missouri" (Record p. 41).

In paragraph 12 of Section C of appellant's Articles of Association (Record p. 32) appears the following recital:

> "It is the intention that the objects and purposes specified in the foregoing clauses of this Article C shall not, unless otherwise specified herein, be in anywise limited or restricted by reference to or inference from, terms of any other clause of this or any

other article of this Certificate, but that the objects and purposes specified in each of the clauses of this Article shall be regarded as independent objects and purposes."

Clause one relates to pipe line and transportation of petroleum. An independent object and purpose.

Clause two relates to acquiring, maintaining, operating and disposing of telegraph and telephone lines. An independent object and purpose.

Clause three pertains to the business of engaging in and carrying on the business generally, of dealing in and transporting goods, wares and merchandise of every description. Another independent object and purpose.

Clause six authorizes, as an independent object and purpose, the business of transportation (aside from that of petroleum).

There is evidence in the record of maintaining and operating telegraph and telephone lines and of transporting goods and wares by auto trucks and other business activities in connection therewith. These, under the terms of appellant's charter, are separate and independent lines of business from that of transporting petroleum, and was so found by the trial court (Record, p. 43).

In view of the fact that a foreign corporation may go into another state without obtaining leave

or license of the latter for all legitimate purposes of interstate commerce (Crutcher vs. Kentucky, 141 U. S. 47, l. c. 58), it is quite significant that appellant has seen fit to domesticate under the Laws of Missouri. If it did not intend to do any intrastate business, then why domesticate in the first instance, and why file an additional affidavit setting forth the amount of its property and business in Missouri in a second affidavit after increasing its capital stock?

The most reasonable construction to be placed upon these acts of the appellant is that it regarded and treated many of the activities it is now and has been engaged in within the State of Missouri as intrastate commerce.

In this connection the remarks of this Court in the case of Pennsylvania R. R. Co. vs. Knight, 192 U. S., at page 28, used the following argument:

> "As shown in the opinion from which we have just quoted many things have more or less close relation to interstate commerce which are not properly to be regarded as a part of it. If the cab which carries the passengers from the hotel to the ferry landing is engaged in interstate transportation, why is not the porter who carries the traveler's trunk from his room to the carriage also so engaged? If the cab service is interstate transportation, are the drivers of the cab and the dealers who supply hay and grain for the horses also

engaged in interstate commerce? And where will the limit be placed?

"We are of the opinion that the cab service is an independent local service preliminary or subsequent to any interstate transportation, and, therefore, the judgment of the Supreme Court of the State of New York was correct, and it is affirmed."

Appellant, in its brief (p. 47), challenges the correctness of the ruling of the lower court in the case at bar and argues that the decision was based upon a misapprehension of the cases upon which the ruling was based, namely, Copper Range Co. and Champion Copper Co. vs. Mass., reported in Cheney Brothers Co. vs. Mass., 246 U. S. 147. We must take issue with appellant in this regard. The Copper Range Company v. Mass. case, which was affirmed by this Court, was decided in favor of Massachusetts by the Supreme Judicial Court of Massachusetts and reported in the 218th Mass. at page 576. The facts as there set out show that the Copper Range Company was organized under the laws of Michigan and was a holding company whose chief asset was stock in a foreign copper mining corporation and also stock and bonds of a Michigan railroad and certain mineral lands. It transacted no commerce either in Boston or elsewhere. Its activities in Massachusetts consisted in receiving monthly dividends

from stock in foreign corporations and depositing them in Boston banks and the payment of these receipts, less officers' salaries and expenses, to its stockholders by way of dividends. Its directors' meetings were held three or four times a year in Boston and its annual stockholders' meetings were also held there. It declared and paid dividends several times annually. The president and treasurer were residents of Massachusetts and corporate records and financial books of account were kept there. The court stated that it did not expressly appear but was fairly inferable from the fact that its treasurer's office was there and that its books of account were kept there, that its assets were also kept there. The Massachusetts Court held these acts to constitute doing business within the Commonwealth, which holding as above stated was affirmed by this Court. It makes no difference so far as the legal results of the foregoing activities are concerned whether the holding company was engaged in interstate commerce as well as intrastate commerce. The same principle was applied in the case of Champion Copper Company vs. Massachusetts, decided and reported in Cheney Brothers Co. vs. Massachusetts supra.

The Champion Copper Company case was also decided by the Supreme Judicial Court of Massachusetts and reported in the 218th Mass., at page 557. The Massachusetts Court found that the

Champion Copper Company, a foreign corporation, was doing business in Massachusetts. The facts in that case are fully set out in the Massachusetts report at page 577, and are briefly as follows:

The Champion Copper Company was organized under the laws of Michigan to mine, smelt and refine copper and other minerals and sell the same. It owned a copper mine in Michigan where its copper was mined. Its product was sold exclusively through a selling agent in New York, which represented the company only with respect to making contracts of sale and the collections of purchasers and remitting the proceeds to the treasurer. The deliveries under contracts of sale were exclusively under the direction of the company's treasurer. The Company maintained its treasurer's office in Boston for the purpose of general direction of the deliveries of copper in accordance with contracts made by its sales agent and for the purpose of informing its sales agent as to amounts of copper to be sold and the prices, and for the necessary bookkeeping for the sales and deliveries, and for the deposit of funds received from all sources in Boston and other banks, and the payment of its office expenses and salaries of its officers and the distribution of dividends among its stockholders. In addition to the treasurer's office, the president also maintained his office in Boston, and five of seven directors resided in Massachusetts. Directors' meetings were held in Boston. The com-

pany's mine in Michigan was placed by a vote of the board of directors under the exclusive management of the general manager, resident of Michigan. But the general management and control of all the business and property of the company was vested in its directors in Boston. The Massachusetts court held these activities in Massachusetts constituted doing business within the Commonwealth, and was not interstate commerce. It is perfectly clear from the facts recited and the holding of the Massachusetts Court that the company was engaged in interstate business by selling and delivering copper in states other than Michigan. In other words, the Copper Range Company was engaged in both interstate and intrastate business. The Massachusetts Court further said that it was not necessary to determine whether the exercise by the treasurer over the sales agent and the other instrumentalities of sales constitute interstate commerce, because apart from these considerations the corporate activities conducted at Boston constituted a doing of business which has no direct relation to commerce, and said at page 579:

> "The entire corporate potentiality dwells in the Boston office. Its executive officers are there. The responsibility for its management as a corporation rests upon those whose headquarters are there. Respecting the effects of our excise law upon such state of facts,

> the language of Pembina Mining Company vs. Pennsylvania, 125 U. S. 181, at page 184, is apposite: 'It only exacts a license tax from the corporation when it has an office in the Commonwealth for the use of its officers, stockholders, agents or employees * * *.' The exaction of a license fee to enable a corporation to have an office for that purpose within the Commonwealth is clearly within the competency of its Legislature. Baltic Mining Company vs. Massachusetts, 231 U. S. 68."

The foregoing decision was affirmed by this Court in the Cheney Brothers case, supra. The distinction between the Copper Range Company and Champion Copper Company cases, above discussed, and the Cheney Brothers case is simply this: Cheney Brothers Company was a Connecticut corpotion whose general business was manufacturing and selling silk fabrics. It maintained in Boston a selling office with one office salesman and four other salesmen who traveled through New England. The salesmen solicited and took orders subject to approval by the home office in Connecticut and it shipped directly to the purchasers. No stock of goods was kept in the Boston office, but only samples used in soliciting and taking orders. Copies and records of orders were retained but no bookkeeping was

done and the office made no collections. The salesmen and the Boston office rent were paid directly from Connecticut and the other expenses of the Boston office were paid from a small deposit kept in Boston for the purpose. No other business was done in the State. This distinction was made by this Court in the Cheney Brothers case, supra.

Appellant cites in his argument the case of Norfolk and Western Railroad Company vs. Pennsylvania, 136 U. S. 114, in support of its contention that it is not doing business in Missouri. An examination of the facts in the Norfolk and Western case discloses that its office maintained in Philadelphia was not its main office, but one maintained under its contracts with connecting railroad lines as an office for the solicitation of business. The main office of the company, which was a Virginia and West Virginia corporation, was at Roanoke, Virginia, from whence the business of the railroad was conducted and directed. That case is thus distinguishable from the case at bar. The Norfolk and Western railroad case was considered by this court in the Cheney Brothers case and was cited as an authority in its holding that the Cheney Brothers case was not engaged in intrastate business in the Commonwealth of Massachusetts, at which time and in the same decision this court decided the Copper Range and Champion Copper Company cases, supra, and thus tacitly held that the Norfolk and

Western case was not an authority in point in the two latter cases.

Appellant refers in its argument (Brief p. 54) to the case of Pembina Consolidated Silver Mining and Milling Company vs. Pennsylvania, 125 U. S. 181, which company was a Colorado corporation organized for the purpose of carrying on a general mining and milling business in that state, and maintained an office in Philadelphia, "for the use of its officers, stockholders, agents and employees," and argues that "the tax against the mining company was sustained for the reason that the company was not engaged in interstate commerce" in Pennsylvania.

We can not agree with appellant's construction of the facts in this case. The corporation was clearly engaged in interstate commerce as well as doing business within the State of Pennsylvania. At page 184 of the decision this Court said:

> "It imposes no prohibition upon the transportation into Pennsylvania of the products of the corporation, or upon their sale in the Commonwealth. It only exacts a license tax from the corporation when it has an office in the Commonwealth for the use of its officers, stockholders, agents or employees. The tax is not for their office, but for the office of the corporation, and the use to which it is put is presumably for the latter's business and

interest. For no other purpose can it be supposed that the office would be hired by the corporation.

"The exaction of a license fee to enable the corporation to have an office for that purpose within the Commonwealth is clearly within the competency of its Legislature."

Then again at page 186 the Court said:

"We do not perceive the pertinency of the position advanced by counsel that the tax in question is void as an attempt by the state to tax a franchise not granted by her, and property or business not within her jurisdiction. The fact is otherwise. No tax upon the franchise of the foreign corporation is levied, nor upon its business or property without the state. A license tax only is exacted as a condition of its keeping an office within the state for the use of its officers, stockholders, agents and employees; nothing more and nothing less; and in what way this can be considered as a regulation of interstate commerce is not apparent."

In addition to the foregoing authorities, the decision of the lower court is amply and fully sustained under the facts in the case at bar by the decision of this Court in the case of Baltic Mining Company vs. Massachusetts, 231 U. S. 68. The facts in that

case involved the validity under the commerce, due process and equal protection clauses of the Federal Constitution of an Act of the Commonwealth of Massachusetts imposing an excise tax on foreign corporations within the Commonwealth. The facts there under consideration and the State statute involved are very similar to the facts and the law in the case at bar.

The Baltic Mining Company was a Michigan corporation organized for the purpose of mining, producing and selling copper, and owned a copper mine with equipment in Michigan and had its principal place of business in that State. It had an office in the City of Boston, for the use of its president and treasurer, residing in Boston, for the general financial management and direction of its affairs and for the meetings of its board of directors and the transfer of its stock. The Baltic Mining Company was attempting to do business in Massachusetts and complied with the foreign corporation laws of that State. Its total property and assets amounted to $10,776,000.00, but none of the property was in Massachusetts except current bank deposits and a certificate for $80,000.00 of stock in another Michigan corporation. It engaged in the mining and refining of copper in Michigan, which was sold for delivery in the several states of the United States and in foreign countries. Considerable quantities of the copper were sold for delivery in Massachusetts, as well

as in other states and transported from the Michigan smelter to the producer.

The company brought suit to recover the excise tax of $500.00 imposed by the Commonwealth pursuant to its Excise Tax Act, and paid by the company, and was dismissed by the Supreme Judicial Court of Massachusetts (207 Mass. 381), and this Court affirmed the decision of the State Court. This Court said: (Baltic Mining Company case, supra, at pages 82-83.)

> "The mere fact that a corporation is engaged in interstate commerce does not exempt it from state taxation. United States Express Company vs. Minnesota, 223 U. S. 335, 344. It is the commerce itself which must not be burdened by state exactions which interfere with the exclusive Federal authority over it. A resort to the receipts of property or capital employed in part at least in interstate commerce, when such receipts or capital are not taxed as such but are taken as a mere measure of a tax of lawful authority within the state, has been sustained." Cases cited.

This Court quoted at page 84, with approval the following language from the Massachusetts Court:

> "The required payment is strictly of an excise tax, and not of a tax upon property

> * * * *." This excise tax is for the commodity or privilege of having an establishment for business in Massachusetts, with the protection of our laws and the financial and other advantages of a situation here."

Again at page 85, this Court said:

> "Every case involving the validity of a tax must be decided upon its own facts, and having no disposition to limit the authority of those cases, the facts upon which they were decided must not be lost sight of in deciding other and alleged similar cases."

Quoting further from the same case, at pages 86-7, this Court said:

> "An examination of the previous decisions in this Court shows that they have been decided upon the application to the facts of each case of the principles which we have undertaken to state, and a tax has only been invalidated where its necessary effect was to burden interstate commerce or to tax property beyond the jurisdiction of the State. * * From the statement of facts it is apparent, however, that each of the corporations in question is carrying on a purely local and domestic business quite separate from its interstate transactions. That local and do-

mestic business, for the privilege of doing which the state has imposed a tax, is real and substantial and not so connected with interstate commerce as to render a tax upon it a burden upon the interstate business of the companies involved. In these cases the ultimate contention is not that the receipts from interstate commerce are taxed as such, but that the property of the corporations including that used in such commerce, represented by the authorized capital of the corporations, is taxed, and therefore interstate commerce is unlawfully burdened by a state statute. While the tax is imposed by taking a percentage of the authorized capital, the agreed facts show that the authorized capital is only a part of the corporations respectively. * * * The conclusion, therefore, that the authorized capital is only used as a measure of a tax, in itself lawful, without the necessary effect of burdening interstate commerce, brings the legislation within the authority of the State. So, if the tax is as we hold it to be, levied upon a legitimate subject of such taxation, it is not void because imposed upon property beyond the State's jurisdiction, for the property itself is not taxed. In so far as it is represented in the authorized capital stock, it is used only as a measure of

> taxation, and as we have seen, such measure may be found in property or in the receipts from property not in themselves taxable."

Appellant claims the right of eminent domain within Missouri.

The Supreme Court of Missouri, in the case of So. Ill. & Mo. Bridge Co., vs. Stone, 174 Mo. 1, used the following language at pages 31-2:

> "No doubt whatever exists that as a general rule a foreign corporation has no extra-territorial existence as such, and can exercise none of the rights conferred by its charter outside of the State creating it, except by the comity of the State in which it essays to act or do business. (Bank of Augusta v. Earle, 13 Peters 588; Railroad v. Koontz, 104 U. S. 12.)
>
> "It follows, of course, that foreign corporations are not entitled by their charters to exercise the right of eminent domain, but in the absence of constitutional prohibitions it is competent for the Legislatures of States in which they seek to do business by enabling acts to vest them with this right." Citing cases.

The fact that appellant desires to exercise the right of eminent domain in the State of Missouri

(Record, p. 26) is further evidence of its intention to do business in Missouri when it domesticated there. Without domesticating it could not exercise the right of eminent domain in Missouri. The acts incident to such exercise must be confined to the courts of the State, which acts undoubtedly constitute doing business within the State.

The evidence shows that appellant has maintained litigation in the State courts of Missouri (Record, p. 21), and this activity is likewise doing business within the State. If it were engaged solely in interstate commerce it would not be necessary to domesticate at all in Missouri and its interstate contracts could be enforced in the courts of Missouri.

The amount or extent of the business done within the State is immaterial. If it does any intrastate business at all it is subject to the Franchise Tax Act of Missouri. The tax is not contingent upon the amount of business it does, but is measured by that proportion of its entire capital stock and surplus that its property and assets in this State bear to all its property and assets wherever located.

V. AND VI.

The burden of proof rests upon the appellant and since the chancellor found the facts against appellant in the trial of the cause this court will not reverse the finding unless the chancellor has clearly

misapprehended the facts, which, we respectfully maintain he has not done in this case.

Therefore, in conclusion, it is respectfully submitted that the evidence amply and fully establishes the fact that appellant is and was engaged in business in Missouri, and in view of the authorities above cited and discussed the finding of the lower court is sustained by the evidence and its decree dismising plaintiff's bill should be affirmed.

Respectfully submitted,

JESSE W. BARRETT,
Attorney-General of Missouri,
J. HENRY CARUTHERS,
Assistant Attorney-General of Missouri,
Solicitors, for Appellees.

APPENDIX.

ARKANSAS:

A salesman for an Ohio corporation made a contract to sell computing scales to a grocer at the latter's place of business in Arkansas. He had the scales with him and delivered them at the time. The contract was sent to the District Manager of the Corporation, also located in Arkansas, for approval. This would show that the corporation was "doing business," so as to require its qualification under the laws of Arkansas.

Miellmier vs. Toledo Scale Co., 128 Ark. 211.

CALIFORNIA.

Section 4 C, 190 Statutes, 1915, requires every corporation "now doing intrastate business in this state to procure annually from the Secretary of State, a license authorizing the transaction of such business in this state, and to pay therefor a license tax prescribed herein."

A railroad which begins and ends in Nevada, but which maintains its general office at Los Angeles, is "doing an intrastate business" in California in the sense of this act. At this office the corporation holds its Directors' Meetings, keeps its books, made deposits and disbursements and purchases supplies.

Bullfrog, Goldfield R. Co. vs. Jordan, 174 Cal. 342.

GEORGIA.

Browning was the Agent for a St. Louis corporation on whose behalf he had solicited orders for the sale of lightning rods. The price paid for the rods included the duty of erecting them without further charge. The rods were shipped from St. Louis to Browning and he erected them for the corporation. The court held this to be "doing business" in the City of Way Cross, because the affixing of the lightning rods to the house was merely the doing of a local act after the Interstate Commerce had completely terminated. . . . "

Browning vs. City of Way Cross, 233 U. S. 16.

IDAHO.

Taking title to real estate in behalf of a corporation was the first of a series of acts intended to be done by the corporation in the State. This constitutes "doing business" and is not an "isolated transaction" in the sense in which that term is used in exempting from requirements of qualification. "The cases holding that a single isolated transaction is not to be considered doing or carrying on business within the state or cases where the matter involved was a single transaction without any intention upon the part of the foreign corpora-

tion to continue to transact their acts of business within the state."

Donaldson vs. Thousand Springs Power Co., 29 Ida. 735.

ILLINOIS.

A foreign corporation in holding all of the controlling interest in the stock of an Illinois corporation is held to be "doing business" in Illinois.

Central Life Securities Co. vs. Smith, 236 Fed. 170.

INDIANA.

The act of purchasing real estate to be used by foreign corporations is not an isolated transaction, but constitutes "doing" or "transacting" business in the State. Failure to qualify under the foreign corporation prior to entering such a contract renders it unenforcible against the seller.

Lowenmeyer vs. National Lumber Co., 125 N. E. 67.

KANSAS.

Foreign corporations engaged in interstate commerce in Kansas are required to comply with Section 1293 of the general statutes of 1901, providing that no foreign corporation doing business in this state shall maintain an action in any of the courts thereof

without first filing a sworn statement with the Secretary of State. The court holds that the statute in question is not repugnant to the commerce clause of the Federal Constitution. Action was instituted on a promissory note given in part payment of the purchase price of goods sold to defendant. The sale was on a written order signed by the defendant in Kansas, subject to the plaintiff's approval and taken by the traveling salesman of the plaintiff. The order was sent to the plaintiff at its home office in another state where it was accepted and from which the goods were shipped to the defendant.

Wilson-Moline Buggy Co. vs. Hawkins, 80 Kans. 117.

KENTUCKY.

Investing in timber and mineral lands in the state without attempting to develop them is "doing business" so as to subject the corporation to a license tax.

Green vs. Kentenia Corp., 175 Ky. 661.

MASSACHUSETTS.

In the case of another corporation held to be "doing business" the court reached its conclusion on the facts of the corporation keeping at its office in Boston stock to repair and replace broken parts of machinery. This was held to be local business

separable from its interstate commerce and not within the protection of the commerce clause although the separation might render interstate commerce profitless.

A holding company organized under the laws of a foreign state whose assets are stocks and bonds of a foreign corporation and land located outside of Massachusetts, but which has an office in that state at which it receives and pays dividends, holds Directors' and Stockholders' meetings and keeps its records and financial books of an account is "doing business" in the commonwealth.

A foreign corporation owning a mine outside of Massachusetts and selling its products exclusively outside the commonwealth but which maintains its treasurer's office in Boston for general direction of the deliveries of its products, keeping a record of the sales and deliveries, being solely a distributing division and holding Directors' Meetings is doing business in the commonwealth. The above decisions are decided by the Supreme Court of the United States in the case of Cheney Bros. Co. vs. Commonwealth, 246 U. S. 147.

NEW YORK.

A foreign corporation is not "doing business" in New York when it has no place of business, no office, and no stock of goods in the state and which simply consigns goods to merchants for selling, the

contracts being subject to the approval of the corporation in another state.

Chase-Hackley Piano Co. vs. Griffin, 149 N. Y. Supp. 998.

A foreign corporation, had an office in New York maintained by its stockholders and directors; made a contract for the sale of real property in another state. The contract provided that the deed should be delivered at the New York office and that installments of the purchase price should be paid there during a period of nearly four years. The Supreme Court, Appellate Term, First Department, held the corporation to be "doing business" in the State and denied its aid in enforcing the contract since the corporation had not first obtained certificate of authority to do business. The court said in part, "it is not necessary that a foreign corporation maintain an office in this state in order to transact business here and to come within prohibition of the statute."

Woodbridge Heights Const. Co. vs. Gippert et al., 92 Misc. 204; 155 N. Y. Supp. 363.

The principal office of the Susquehanna Coal Co., a Pennsylvania corporation, is in Philadelphia. It has a branch office in New York, which is in charge of a "Sales Agent," named Peterson. A

suite of offices is maintained in the Equitable Building and the sign on the door is "Susquehanna Coal Co., Walter Peterson, Sales Agent." The salesmen meet daily and receive instructions from their superior. All sales in New York are subject, however, to confirmation by the home office in Philadelphia. All payments are made by customers to the Treasurer in Philadelphia; the salesmen are without authority to receive or endorse checks. The bank account in the name of the company is kept in New York and is subject to Peterson's control, but the payments made from it are for the salaries of the employes and petty cash and disbursements incidental to the maintaining of the office.

The Court of Appeals holds that to do these things is to do business within New York in such a sense as to subject the corporation to the jurisdiction of the courts of New York and render service of process upon its agent valid and binding service upon the corporation.

Tauza vs Susquehanna Coal Co., 220 N. Y. C. of A., 259.

It is now the law of this state that a foreign corporation cannot be sued here unless it is "doing business" in this state, even though plaintiff who seeks to bring suit is a resident or domestic corporation. In the instant case the court holds that the corporation was "doing business" in the state

within the meaning of the provision when it did the following:

"An office was maintained in the state in charge of a person who solicited business for it. The name of the corporation was placed on the office door and upon the stationery used by the person in charge. The rent of the office, stenographer's salary, and the telephone and incidental charges at the end of the month were paid by the corporation. The agent did business on his own account. He had no authority to bind the corporation; but simply submitted inquiries or offers for the corporation to pass upon. The corporation had no bank account or money or property in the State of New York except furniture in the office.

Interocean Forwarding Co. vs. Chas. R. McCormick & Co., 168 N. Y. Supp. 177.

Maintaining a branch office is "doing business." A corporation having a branch office in New York in charge of a general sales manager, employing salesmen in the branch, maintaining a bank account for the benefit of the branch, but in the name of an employee, using a special letterhead for the branch, its name being listed in the telephone book, is "doing business" in New York, so as to require qualification in New York.

Electric Specialty Co. vs. Rosenbaum, 102, Misc. 520; 169 N. Y. Supp. 157.

A corporation which maintains a warehouse in New York from which is delivered goods on contracts signed in New York is "doing business" in the State even though the contracts contain a printed notice that it was subject to approval in Chicago. Such corporation may not sue in New York upon a contract made prior to its qualification to do business as a foreign corporation.

American Can Co. vs. Grassi Contract Co., 102 Misc. 230; 168 New York Supp. 689.

Merely maintaining an office in the State and entering into a contract to be in part performed there, is "doing business" so as to require qualification by a foreign corporation.

East Coast Oil Co., S. A., vs. Hollins et al., 183 App. Div. 67; 170 N. Y. Supp. 576.

OREGON.

A foreign corporation which purchased land in Oregon had the deed recorded, gave a mortgage, leased the property, contracted to sell a portion thereof, and held and voted stock in a local irrigation company, was doing business in Oregon, and having failed to comply with the requirements prerequisite to doing business it was not permitted to sue in an action to compel specific performance. The contention that the transaction was a single isolated instance of doing business in the state was

dismissed by the court after consideration of all the facts, chief of which were that the company had been formed for the purpose of taking over land in question and was doing no other business.

Weiser Land Co. vs. Bohrer, 78 Ore. 202.

TEXAS.

Sale and installation of gasoline containers and pumps is "doing business" in the State, so as to require qualification by a foreign corporation. "The performance of the contract was necessarily to be had in Texas. The employment of state labor and the purchasing of a portion of material in this state for the installation of the machinery furnished appellant was in line with appellee's business and for pecuniary profit. Our conclusion is that the performance of the contract sued upon necessarily required the transaction of business in this state, and, as appellee had no permit to transact business here, the trial court erred in holding that it could maintain this suit."

Bryan vs. Bowser & Co., 209 S. W. 189.

MISSOURI.

A foreign corporation appointing an agent in Missouri to whom goods are shipped on consignment and sold on commission is "doing business" and the contract of agency is void if entered into

before corporation has procured authority to do business.

Farrand Co. vs. Walker, 169 Mo. A. 602.

A Kansas Corporation agreed to establish and conduct a chautauqua at Joplin in consideration of the purchase of a certain number of season tickets by certain persons. It did not comply with Sections 9790, 9791 and 9792, R. S. 1919, requiring the qualification of foreign corporations. For that reason it is not entitled to recover on contracts to purchase these tickets. The plaintiff was not engaged in a mere isolated transaction. It made arrangements with various performers and lecturers to come to Missouri from other states; it erected a tent, sold tickets, conducted the entertainment for a week and advertised it as a permanent affair to return the following summer.

Wichita Film & Supply Co. vs. Yale, 194 Mo. A. 60.

A company shipped brooms into Missouri and sold them from an office here.

"In doing that business it became necessary to employ an agent and to assure his fidelity it was prudent and in keeping with business methods to take from defendant a surety bond and it did so by procuring the one in controversy. We think in such circumstances that obtaining the bond from

defendant was a part of the business it was doing and that in obtaining it plaintiff was prosecuting or doing the business for which it was incorporated."

Having failed to qualify at the time the bond was secured it cannot recover upon it against the Surety Company.

Kelly Broom Co. vs. Mo. Fidelity and Casualty Co., 195 Mo. A. 305.

Plaintiff, a New Jersey Corporation, held a lease upon certain mining property in Jasper County, Missouri, and had done some mining thereon. Defendant, a Missouri corporation, was mining on this same property without the permission of the plaintiff company. Plaintiff filed a bill in equity to enjoin defendant from further operation and mining thereon. Defendant, by way of defense, alleged that plaintiff had not secured a certificate of domestication from the State of Missouri and was therefore not entitled to maintain this action by reason thereof.

The Supreme Court of Missouri, speaking through Judge Graves, at page Twelve, 221 Mo., in discussing the facts and the law, had this to say: "But the question here is, can a foreign corporation come into this state, open up a place of business and actually do a part of the business authorized by its charter, in violation of our law and without taking out a license and otherwise complying with our

statute, have the doors of our courts open to them, to protect the unlawful business? We think not."

The court nisi dismissed the plaintiff's bill in equity on the ground that plaintiff was "doing business" in Missouri without having first secured a license authorizing it so to do. The Supreme Court affirmed this judgment.

Zinc & Lead Co. vs. Zinc Mining Co., 221 Mo. 7.

NEW JERSEY.

A limited partnership organized under the laws of Pennsylvania was held by the Supreme Court of New Jersey, to have all the essential characteristics of a corporation and was treated and held as a corporation by the New Jersey Supreme Court.

This is a Pipe Line Company organized for the purpose of transporting oil and petroleum and its entire business consisted of the transportation of oil or petrolum from points in New York and Pennsylvania to points in New Jersey and the matters incidental thereto. The company contended that it was engaged solely in interstate commerce. The court in passing upon this question said, "but, plainly, the company does business in New Jersey. Here it owns, maintains and operates a pipe line across the state, a pumping station at Change Water, storage tanks, distributing apparatus, and a business office in Bayonne. All this it does as an artificial

entity, distinct from the personal members who brought it into being, claiming the attributes which its Pennsylvania charter confers, and which in our opinion gives it a corporate character. By taxing it as a corporation, the authorities of New Jersey acquiesce in this claim, but require the company to comply with the conditions of such acquiescence.

In this respect the company comes clearly within the intent and meaning of the statute.

The last objection is that the imposition of the tax is an unconstitutional interference with interstate commerce.

According to the facts agreed upon, the entire business of the company consists of transportation of oil or petroleum from points in New York and Pennsylvania to points in New Jersey and of matters incidental thereto, and consequently it seems to be merely interstate commerce.

The tax levied is designated by the statute as "an annual tax for the use of the state by way of a license for its corporate franchise," and consists of eight-tenths of one percentum of "the gross amount of its receipts from the transportation of oil or petroleum through its pipes or in and by its tanks and cars in this state." During the year preceding the levy, the said gross amount being such proportion of its gross receipts for transportation of oil or petroleum over its whole line as the length of its

line in this state bears to the length of its whole line.

The question thus raised is one to be decided according to the views of the Supreme Court of the United States. Those views have been recently expressed in a case which appears to be on all fours with the present case. I refer to Maine vs. Grand Trunk Ry. Co., 142 U. S. 217, which is so apposite for present purposes as to preclude the need or the utility of further investigation.

Upon the authority of that decision I think the objection stated must be overruled.

The tax should be affirmed with costs."

Tidewater Pipe Co. vs. State Board of Assessors, 57 New Jersey 516.

MAINE.

The defendant is a corporation created under the laws of Canada and has its principal place of business at Montreal in that Province. Its railroad in Maine was constructed by the Atlantic and St. Lawrence R. R. Co. under a charter from that state, which authorized it to construct and operate a railroad from the city of Portland to the boundary line of the State; and, with the permission of New Hampshire and Vermont, it constructed a railroad from that city to Island Pond in Vermont, a distance of 149½ miles, of which 82½ miles are within the State of Maine. In March, 1853, that company

leased its rights and privileges to the defendant, the Grand Trunk Railway Co., which had obtained legislative permission to take the same; and since then it has operated that road and used its franchises.

A Statute of Maine enacted that every corporation. . . . . operating a railroad in the State, should pay the State Treasurer, for the use of the State, "an annual excise tax for the privilege of exercising its franchise" in the State, and it provided that the amount of such tax should be ascertained as follows:

"The amount of the gross transportation receipts, as returned to the Railroad Commissioners for the year ending on the 30th of September next preceding the levying of such tax, shall be divided by the number of miles of Railroad operated, to ascertain the average gross receipts per mile; when such average receipts per mile shall not exceed $2,250.00, the tax shall be equal to one-fourth of 1 percentum of the gross transportation receipts . . . . and so on, increasing the rate of the tax one-fourth of 1 percentum for each additional $750.00 of average gross receipts per mile or fractional part thereof . . . When a railroad lies partly within and partly without this state or is operated as a part of a line or system extending beyond a state, the tax shall be equal to the same proportion of the gross receipts in this State, as herein provided, and its amount determined as follows:

The gross transportation receipts of such railroad, line or system, as the case may be over its whole extent, within and without the state shall be divided by the total number of miles operated, to obtain the average gross receipts per mile, and the gross receipts in this state shall be taken to be the average gross receipts per mile, multiplied by the number of miles operated within the state. . . . . .

The defendant, the Grand Trunk Ry. Company, made no returns as a corporation, but it furnished the data and caused the Atlantic and St. Lawrence R. R. Co. to make a return of the gross transportation receipts over its road 149½ miles in length, including the 82½ miles in Maine, for the years 1881 and 1882, and upon this return the governor and council pursuant to the statute ascertained the proportion of the gross receipts in the State, and assessed the tax in controversy accordingly. To recover these taxes as debts due the State, the present action was brought in the Supreme Judicial Court of the State of Maine, and, on application of the defendant, it was transferred to the Circuit Court of the United States. The defendant pleaded nil debet, accompanied with a statement of special matters of defense. By stipulation of the parties, the case was tried by the Court, which held that the imposition of the taxes in question was a regulation of interstate and foreign commerce, in conflict with the exclusive powers of Congress under the Constitution of the United

States and was therefore invalid. It accordingly gave judgment for the defendant, that the plaintiff take nothing by its writ, and that the defendant recover its costs. From that judgment the case is brought to this court on writ of error.

After the above statement of facts Mr. Justice Field delivered the opinion of the court which is in part as follows:

"The tax, for the collection of which this action is brought, is an excise tax upon the defendant corporation for the privilege of exercising its franchises within the State of Maine. It is so declared in the statute which imposes it; and that a tax of this character is within the power of the State to levy there can be no question. The designation does not always indicate merely an inland imposition or duty on the consumption of commodities, but often denotes an impost for a license to pursue certain callings, or to deal in special commodities, or to exercise particular franchises. It is used more frequently, in this country, in the latter sense than in any other. The privilege of exercising the franchises of a corporation within a State is generally one of value, and often of great value, and the subject of earnest contention. It is natural, therefore, that the corporation should be made to bear some proportion of burdens of government. As the granting of the privilege rests entirely in the discretion of the State, whether the corporation be of domestic or

foreign origin, it may be conferred upon such conditions, pecuniary or otherwise, as the State in its judgment may deem most conducive to its interests or policy. It may require the payment into its treasury, each year of a specific sum, or may apportion the amount exacted according to the value of the business permitted, as disclosed by its gains or receipts of the present or past years. The character of the tax, or its validity, is not determined by the mode adopted in fixing its amount for any specific period or the times of its payment. The whole field of inquiry into the extent of revenue from sources at the command of the corporation, is open to the consideration of the State in determining what may be justly exacted for the privilege. The rule of apportioning the charge to the receipts of the business would seem to be eminently reasonable, and likely to produce the most satisfactory results, both to the State and the corporation taxed.

The court below held that the imposition of the taxes was a regulation of commerce, interstate and foreign, and therefore in conflict with the exclusive power of Congress in that respect; and on that ground alone it ordered judgment for the defendant. This ruling was founded upon the assumption that a reference by the statute to the transportation receipts and to a certain percentage of the same in determining the amount of the excise tax, was in effect the imposition of the tax upon such receipts, and there-

fore an interference with interstate and foreign commerce. But a resort to those receipts was simply to ascertain the value of the business done by the corporation, and thus obtain a guide to a reasonable conclusion as to the amount of the excise tax which should be levied; and we are unable to perceive in that resort any interference with transportation, domestic or foreign, over the road of the railroad company, or any regulation of commerce which consists in such transportation. If the amount ascertained was specifically imposed as the tax, no objection to its validity would be pretended. And if the inquiry of the State as to the value of the privilege were limited to receipts of certain past years instead of the year in which the tax is collected, it is conceded that the validity of the tax would not be affected; and if not, we do not see how a reference to the results of any other year could affect its character. There is no levy by the statute on the receipts themselves, either in form or fact; they constitute, as said above, simply the means of ascertaining the value of the privilege conferred.

* * * * * * * * * * *

It follows from what we have said, that the judgment of the court below must be reversed, and the cause remanded, with directions to enter judgment in favor of the State for the amount of the taxes demanded; and it is so ordered.

Maine vs. Grand Trunk R. Co., 142 U. S. 217.

OZARK PIPE LINE CORPORATION *v.* MONIER ET AL., CONSTITUTING THE STATE TAX COMMISSION OF THE STATE OF MISSOURI, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI

No. 181. Argued November 26, 1924.—Decided January 12, 1925.

1. A Missouri statute requires every corporation not organized under the laws of that State but engaged in business therein to pay an annual franchise tax equal to one-tenth of 1% of the par value of its capital stock and surplus employed in business in the State. Rev. Stats. 1919, §§ 9836-9848. *Held*, that the tax is one upon the privilege or right to do business. P. 562.
2. Such a tax cannot constitutionally be exacted of a foreign corporation whose business in the taxing State consists exclusively in the operation of a pipe line for transporting petroleum through the State in interstate commerce, and in ownership of property, maintenance of its principal office, purchase of supplies, employment of labor, maintenance and operation of telephone and telegraph lines and automobiles, and other acts within the State, all exclusively for the furtherance of such interstate commerce, and constituting the means and instruments by which it is conducted. P. 563.

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[a] *Taylor* v. *McGregor State Bank*, 144 Minn. 249; *Wood* v. *Vogel*, 204 Ala. 692; *Bell* v. *Buffinton*, 244 Mass. 294.

3. The facts that a foreign corporation whose business in a State is entirely interstate commerce is incorporated for local business also, and has applied for and received a local license conferring power to exercise the right of eminent domain, do not empower the State to tax its right to carry on the interstate business. P. 566.

Reversed.

APPEAL from a decree of the District Court which dismissed the appellant corporation's bill in a suit to enjoin the appellees,—officials of Missouri—from taking proceedings for the revocation of its license to do business in Missouri and for making the amount of an annual franchise tax, with penalties, damages and interest, a lien upon its property in that State.

Mr. Truman Post Young, with whom *Mr. Kent Koerner*, *Mr. William F. Fahey* and *Mr. John M. Carroll* were on the briefs, for appellant.

I. The Missouri franchise tax is a tax upon the privilege of doing business. *Marquette Hotel Co.* v. *State Tax Comm.*, 282 Mo. 213.

II. The maintenance of the office in St. Louis for the purposes shown in the evidence did not constitute doing an intrastate business within the State which would be subject to taxation, nor did the maintenance of the pipe line nor the other activities described in the evidence. All of these activities centered around the interstate business of the company. *Cheney Bros. Co.* v. *Massachusetts*, 246 U. S. 147; *Norfolk, etc., R. R. Co.* v. *Pennsylvania*, 136 U. S. 114; *Gloucester Ferry Co.* v. *Pennsylvania*, 114 U. S. 196; *Philadelphia S. S. Co.* v. *Pennsylvania*, 122 U. S. 326; *McCall* v. *California*, 136 U. S. 104; *Pembina Mining Co.* v. *Pennsylvania*, 125 U. S. 181.

III. The powers granted to the company in its original Maryland charter are not decisive of the question as to what, if any, business the corporation does within the State of Missouri. That question is a question of fact and not of charter powers.

It is obvious that a State cannot tax a foreign corporation for doing business within the State merely because it has the charter power to do so.

IV. The fact that the company obtained a license to do business in Missouri does not indicate that the company was doing an intrastate business. *Norfolk, etc. R. R. Co.* v. *Pennsylvania*, 136 U. S. 114.

Even if the corporation had been originally incorporated in Missouri, it would not be subject to a tax upon interstate commerce. *Philadelphia S. S. Co.* v. *Pennsylvania*, 122 U. S. 326.

V. No State may levy a franchise or excise tax upon a company doing solely an interstate business in, through or across the State. The transportation of oil from one State to another is interstate commerce. *Eureka Pipe Line Co.* v. *Hallanan*, 257 U. S. 265; *United Fuel Gas Co.* v. *Hallanan*, 257 U. S. 277; *Kansas City, etc. Ry. Co.* v. *Botkin*, 240 U. S. 227; *Leloup* v. *Port of Mobile*, 127 U. S. 640.

VI. Even where a corporation is doing both interstate and intrastate business, a tax so levied as to include or compel the payment of a tax upon the interstate business will be void. *Oklahoma* v. *Wells, Fargo & Co.*, 223 U. S. 298; *Pullman Co.* v. *Kansas*, 216 U. S. 56; *Western Union Tel. Co.* v. *Kansas*, 216 U. S. 1; *International Paper Co.* v. *Massachusetts*, 246 U. S. 135; *Crew Levick Co.* v. *Pennsylvania*, 245 U. S. 292; *Looney* v. *Crane Co.*, 245 U. S. 178; *Ludwig* v. *Western Union Tel. Co.*, 216 U. S. 146; *Locomobile Co.* v. *Massachusetts*, 246 U. S. 146.

VII. This case does not come within the principle of those cases upholding taxes, in form privilege taxes but in substance and effect general property taxes, *Postal Telegraph-Cable Co.* v. *Adams*, 155 U. S. 688; nor within those holding that where the tax is a tax upon intrastate commerce the mere fact that the method of computation

requires reference to interstate business will not render it invalid. *Hump Hairpin Co.* v. *Emmerson*, 258 U. S. 290.

Mr. Jesse W. Barrett, Attorney General of the State of Missouri, and *Mr. J. Henry Caruthers* for appellees.

I. Interstate commerce is a "practical conception," and the tax in question to be valid must not, in its practical effect and operation, burden interstate commerce. *Eureka Pipe Line Co.* v. *Hallanan*, 257 U. S. 265; *Hump Hairpin Co.* v. *Emmerson*, 258 U. S. 290; *St. Louis S. W. Ry. Co.* v. *Arkansas*, 235 U. S. 350.

II. Corporations doing both interstate and intrastate commerce may be required to pay a franchise or excise tax.

While a State may not use its taxing power to regulate or burden interstate commerce, it is settled that a state excise tax which affects such commerce only indirectly and remotely, may be entirely valid, where it is clear that it is not imposed with the covert purpose or with the effect of defeating federal constitutional rights. *Hump Hairpin Co.* v. *Emmerson*, 258 U. S. 290; *Maine* v. *Grand Trunk Ry. Co.*, 142 U. S. 217; *U. S. Express Co.* v. *Minnesota*, 223 U. S. 335; *Baltic Mining Co.* v. *Massachusetts*, 231 U. S. 68; *Kansas City, etc. R. R. Co.* v. *Stiles*, 242 U. S. 111; *Kansas City, etc. Ry. Co.* v. *Kansas*, 240 U. S. 227; *U. S. Glue Co.* v. *Oak Creek*, 247 U. S. 321; *Schwab* v. *Richardson*, 263 U. S. 88.

III. The Missouri Franchise Tax Act has been held by this Court not to be a burden on interstate commerce. *St. Louis-San Francisco Ry. Co.* v. *Middlekamp*, 256 U. S. 226.

IV. What is "doing business" by a foreign corporation in a State other than that of its incorporation? The answer to this question constitutes the sole controversy presented here.

The evidence shows, and the trial court found, that the plaintiff maintains its principal office in Missouri, in the City of St. Louis, where it keeps its stock certificate books, books of account, financial reports, bank accounts, pays all the employees, both within and without the State, purchases supplies within the State, employs labor within the State, maintains and operates telephone and telegraph lines and purchases supplies and equipment therefor in this State; and acquires rights-of-way both by purchase and condemnation under its right of eminent domain granted to it by the State. It is constantly entering into and executing contracts for the transportation of crude oil, and of employment and purchases, and has frequent damage cases by reason of broken and leaking pipe lines which result in overflowing and damaging the lands adjacent thereto. Settlements and adjustments of such damages are effected both in and out of the courts of this State. Material and labor are assembled at the broken points and repairs made.

The vice-president, secretary, treasurer and other officers maintain their offices and headquarters in their offices in St. Louis, where telephones are maintained, and the name of the company appears on the doors of said offices. Stockholders and directors meetings are held there. All certificates for the receipt of oil for transportation are sent to the St. Louis office where the revenue for said transportation is figured and entered of record. The tariff rates are also kept there and, in fact, the entire business of the corporation is managed and directed from the St. Louis office.

The court remarked that these facts were not traversed and were not susceptible of contradiction in any substantial particular.

In view of the foregoing evidence and finding of facts and the following decisions, appellees contend that the

decree of the lower court should be affirmed. *Cheney Bros. Co.* v. *Massachusetts*, 246 U. S. 147; *Knights Templars' Indemnity Co.* v. *Jarman*, 187 U. S. 197; *Horn Mining Co.* v. *New York*, 143 U. S. 305; *Board of Trade* v. *Hammond Elevator Co.*, 198 U. S. 424; *Diamond Glue Co.* v. *U. S. Glue Co.*, 187 U. S. 611; *Connecticut Life Ins. Co.* v. *Spratley*, 172 U. S. 602; *Mutual Reserve Ins. Co.* v. *Birch*, 200 U. S. 612.

V. A finding of fact by a chancellor, who heard the witnesses, will not be reversed, except in a clear case.

VI. The burden of proof rests upon appellant. *Maxwell Land Co.* v. *Dawson*, 151 U. S. 586.

MR. JUSTICE SUTHERLAND delivered the opinion of the Court.

Appellant is a Maryland corporation. It owns and operates a pipe line extending from within Oklahoma through Missouri to a point in Illinois, together with certain gathering lines in Oklahoma. Through this line crude petroleum is conducted to Illinois and there delivered. Oil is neither received nor delivered in the State of Missouri. Since it began operations appellant has been assessed and has paid general property taxes upon that portion of its line, and upon its other assets, in Missouri. It maintains its principal office in Missouri where it keeps its books and bank accounts and from which it pays its employees within and without the State, purchases supplies, employs labor, maintains telephone and telegraph lines, enters into contracts for transportation of crude oil, and carries on various other activities connected with and in furtherance of its pipe line operations. Along the pipe line in Missouri there are three pumping stations the sole use of which is to accelerate the passage of the oil through the line. It owns and operates passenger and truck automobiles, but these as well as its other property in Missouri are used exclusively in the

prosecution of its interstate business. In compliance with the laws of Missouri applicable to corporations formed in other States desirous of transacting business in Missouri, appellant filed with the Secretary of State its articles of incorporation, and amended articles showing an increase in its capital stock, paid license taxes aggregating $6,401.50, and obtained a license and authority to engage "exclusively in the business of transporting crude petroleum by pipe line." It thereby acquired the right of eminent domain under the laws of the State.

The controversy arises over an attempt on the part of the State authorities to collect from appellant an annual franchise tax under §§ 9836–9848, Rev. Stats. Mo. 1919, pp. 3015–3020. The statute requires every corporation not organized under the laws of Missouri but engaged in business therein, to pay an annual franchise tax equal to one-tenth of one per cent. of the par value of its capital stock and surplus employed in business in the State. For the purpose of the tax the corporation is deemed to have employed in the State "that proportion of its entire capital stock and surplus that its property and assets in this State bears to all its property and assets wherever located." The corporation is required to make an annual report in writing to the State Tax Commission in such form as may be prescribed, giving the amount of its authorized and subscribed capital stock, the par value and market value thereof and other specified information, as a basis, with other things, for the computation of the tax. Appellant, having failed to furnish this report, was threatened by appellees with an action in the name of the State to revoke its license and with such proceedings as would cause the amount of the tax, together with penalties, damages, and interest, to become a lien upon its property and thereby create a serious cloud upon the title thereto. Upon these facts suit was brought to enjoin appellees from going forward

with such action and proceedings, upon the ground that the statute, as applied to appellant, contravenes the commerce clause of the Constitution of the United States. After a hearing the court below rendered a final decree against appellant dismissing its bill.

The tax is one upon the privilege or right to do business, *State ex rel.* v. *State Tax Commission*, 282 Mo. 213, 234; and if appellant is engaged only in interstate commerce it is conceded, as it must be, that the tax, so far as appellant is concerned, constitutionally cannot be imposed. It long has been settled that a State cannot lay a tax on interstate commerce in any form, whether on the transportation of subjects of commerce, the receipts derived therefrom, or the occupation or business of carrying it on. *Leloup* v. *Port of Mobile*, 127 U. S. 640, 648; *Kansas City Ry. Co.* v. *Kansas*, 240 U. S. 227, 231, and cases cited. Plainly, the operation of appellant's pipe line is interstate commerce and beyond the power of State taxation. *Eureka Pipe Line Co.* v. *Hallanan*, 257 U. S. 265, 272; *United Fuel Gas. Co.* v. *Hallanan*, 257 U. S. 277. But the contention in justification of the tax is that appellant is also engaged in doing local business, the basis of such contention being the facts concerning its ownership and use of property, other than the pipe line, and its various acts and activities within the State hereinbefore recited; and, further, that the purposes for which it is incorporated, as declared in its articles, comprehend other activities than that of transporting petroleum, namely, the acquisition and operation of telegraph and telephone lines, dealing in and transporting merchandise, etc.

An extended review of the decisions of this Court dealing with this phase of the subject is not necessary. All proceed from the same principles, but range themselves on one side or the other of the line as the facts do or do not demonstrate that the tax as a practical matter con-

stitutes a burden upon interstate commerce. The facts upon which these former decisions rest, therefore, must be borne in mind in applying them to other and alleged similar cases. If the business taxed is in fact separate local business, not so connected with interstate commerce as to render the tax a burden upon such commerce, the tax is good. An illustration of such a tax is found in *Pennsylvania R. R. Co.* v. *Knight*, 192 U. S. 21, where this Court upheld a state franchise tax upon a cab service maintained wholly within the State of New York by the railroad company to convey passengers to and from its terminus in New York City, for which service the charges were separate from other transportation charges. The principle announced (p. 27) was: "Wherever a separation in fact exists between transportation service wholly within the State and that between the States a like separation may be recognized between the control of the State and that of the Nation. *Osborne* v. *Florida*, 164 U. S. 650; *Pullman Co.* v. *Adams*, 189 U. S. 420." On the other hand, in *Norfolk, etc. R. R. Co.* v. *Pennsylvania*, 136 U. S. 114, 120, a Pennsylvania tax of similar character sought to be imposed upon a Virginia railroad corporation was held bad. The railroad company maintained an office in Pennsylvania for the use of its officers, stockholders, agents and employees and expended large sums of money in that State in the purchase of materials and supplies for its railroad. It owned a small amount of property in the State. In holding that the tax contravened the commerce clause the Court said:

"Was the tax assessed against the company for keeping an office in Philadelphia, for the use of its officers, stockholders, agents and employés, a tax upon the business of the company? In other words, was such tax a tax upon any of the *means* or *instruments* by which the company was enabled to carry on its business of interstate commerce? We have no hesitancy in answering

that question in the affirmative. What was the purpose of the company in establishing an office in the city of Philadelphia? Manifestly for the furtherance of its business interests in the matter of its commercial relations. . . . Again, the plaintiff in error does not exercise, or seek to exercise, in Pennsylvania any privilege or franchise not immediately connected with interstate commerce and required for the purposes thereof. Before establishing its office in Philadelphia it obtained from the secretary of the Commonwealth the certificate required by the act of the State legislature of 1874 enabling it to maintain an office in the State. That office was maintained because of the necessities of the interstate business of the company, and for no other purpose. A tax upon it was, therefore, a tax upon one of the means or instrumentalities of the company's interstate commerce; and as such was in violation of the commercial clause of the Constitution of the United States."

Heyman v. *Hays*, 236 U. S. 178, 185–186, involved a county privilege tax for carrying on a liquor business. The complainant was a liquor merchant who sold no liquor directly or indirectly within the State but conducted a mail order business with persons in other States exclusively. The effort to sustain the tax was upon the grounds that complainant had a stock of goods within the State susceptible of being sold therein, that care and attention for the purpose of packing and otherwise must necessarily be given these goods, that orders for shipment were received in the State, and that a clerical force or other assistance was maintained within the State to keep accounts, supervise the business, receive the price resulting from shipments, and so on. This Court said that assuming these facts they did not take the business out of the protection of the commerce clause (p. 186): "We reach this conclusion because we are of opinion that giving the fullest effect to the conditions stated they

were but the performance of acts accessory to and inhering in the right to make the interstate commerce shipments and therefore to admit the power because of their existence to burden the right to ship in interstate commerce would necessarily be to recognize the authority to directly burden such right."

The present case comes within the reasoning of the two decisions last cited. The business actually carried on by appellant was exclusively in interstate commerce. The maintenance of an office, the purchase of supplies, employment of labor, maintenance and operation of telephone and telegraph lines and automobiles, and appellant's other acts within the State, were all exclusively in furtherance of its interstate business; and the property itself, however extensive or of whatever character, was likewise devoted only to that end. They were the means and instrumentalities by which that business was done and in no proper sense constituted, or contributed to, the doing of a local business. The protection against imposition of burdens upon interstate commerce is practical and substantial and extends to whatever is necessary to the complete enjoyment of the right protected. *Heyman* v. *Hays, supra,* p. 186.

The court below grounded its decision chiefly upon *Cheney Brothers Co.* v. *Massachusetts,* 246 U. S. 147; but a review of that case will clearly demonstrate that it cannot be given the effect thus ascribed to it. Seven foreign corporations sought to avoid a Massachusetts excise tax on the ground, among others, that, as imposed, it contravened the commerce clause of the Constitution. This Court held the tax invalid as to one of the corporations and sustained it as to the other six. The first of the six kept a stock of machine parts in the State which were sold both within and without the State, and the court simply held that the portion of the business which was purely local was subject to local taxation. The

second did an extensive local business in repairing cars of its own make and in selling second-hand cars. The third employed salesmen who took orders for its product from local retailers and turned them over to be filled by the nearest wholesaler, and this amounted, as the Court said, simply to one local merchant buying from another. The fourth and fifth were mining companies operating mines in Michigan with offices in Boston where their directors met, declared and paid dividends, etc. Interstate commerce was not affected. Indeed, it does not affirmatively appear that there was any such commerce to be affected. In the case of the sixth the commerce clause was not involved. The remaining case, (*Cheney Bros. Co.*), in which the tax was held bad, was that of a Connecticut corporation engaged in manufacturing and selling silk fabrics. It maintained in Boston a selling office with an office salesman and four traveling salesmen who solicited and took orders subject to approval by the home office from which shipments were made directly to the purchasers. The Court held that this did not constitute doing a local business, and said (p. 153): "The maintenance of the Boston office and the display therein of a supply of samples are in furtherance of the company's interstate business and have no other purpose. Like the employment of the salesmen, they are among the means by which that business is carried on and share its immunity from State taxation." It will thus be seen that there is nothing in this decision upon which the decree under review can properly rest. Its effect is entirely the other way.

Some stress is laid upon the fact that the objects and purposes specified in appellant's articles of incorporation are not confined to the transportation of petroleum but include the doing of other business local in character. As to this, it is enough to say that none of these powers were in fact exercised in the State of Missouri; and so

far as this case is concerned the power to tax depends upon what was done and not upon what might have been done. Moreover, the license issued by the State authorized appellant to engage "exclusively in the business of transporting crude petroleum by pipe line."

Nor is it material that appellant applied for and received a Missouri license or that it had the power thereunder to exercise the right of eminent domain. These facts could not have the effect of conferring upon the State an authority, denied by the Federal Constitution, to regulate interstate commerce. The State has no such power even in the case of domestic corporations. See *Philadelphia S. S. Co.* v. *Pennsylvania*, 122 U. S. 326, 342. The statute as applied to appellant is unconstitutional.

Reversed.

MR. JUSTICE BRANDEIS, dissenting.

The Court assumes, without discussion, that if, in Missouri, the company is engaged exclusively in interstate commerce, the tax assessed upon the Ozark Company is bad. It concludes, upon discussion, that the business actually done by the company within that State is exclusively interstate commerce, because the article with which it deals is not produced within Missouri and the physical operations of the company within the State relate directly or indirectly to transporting the article through it. Under the rule applied, every tax laid by any State upon the corporate franchise (properly so-called) of every corporation, domestic or foreign, must be void, in the absence of congressional authorization, where the corporation is actually engaged exclusively in what is deemed interstate commerce. I find in the Constitution no warrant for the assumption which leads to such a result.

The tax assailed is not laid upon the occupation, as was that in *Texas Transport & Terminal Co.* v. *New*

Orleans, 264 U. S. 150. Nor is the tax laid upon the privilege of doing business. It is laid upon the privilege of carrying on business in corporate form; of doing so with a usual place of business within the State, and with power to exercise for that purpose the right of eminent domain. The office within the State is the corporation's main office. The property physically located within the State constitutes more than half of all its property. The operations actually performed within the State include, among others, mechanical operations indispensable to the conduct of the business, and extensive auxiliary activities. The business which the company sought and obtained leave to do in corporate form is intrastate or interstate or both. The broad powers sought and granted, it still possesses and seeks to retain.

The immunity from state taxation accorded is not that enjoyed by federal instrumentalities in the absence of legislation by Congress authorizing such taxation. See *Thompson* v. *Pacific Railroad*, 9 Wall. 579. It is not the immunity of a federal corporate franchise, as in *California* v. *Central Pacific R. R. Co.*, 127 U. S. 1, 42. It has not the support of congressional action. The tax is held void solely on the ground that it is obnoxious to the Commerce Clause. A state tax is obnoxious to that provision of the Federal Constitution only if it directly burdens interstate commerce, or (where the burden is indirect) if it obstructs or discriminates against such commerce. Here, there is no contention that, in fact, the tax assessed either obstructs, or appreciably burdens, interstate commerce. The tax is trifling in amount.[1]

[1] It is now one-twentieth of one per cent. of that fraction of the whole capital stock and surplus which is proportionate to the fraction in value of the total assets of the corporation which are located within the State. The question of a limit upon the amount of the tax discussed in *Baltic Mining Co.* v. *Massachusetts*, 231 U. S. 68, 87, and *International Paper Co.* v. *Massachusetts*, 246 U. S. 135, 140, is not material here.

There is no contention that, in fact, the tax discriminates against interstate commerce. The tax is applied alike whether the business done is interstate, or intrastate, or both.[2] There is no contention that the statute discriminates against corporations organized under the laws of other States. The tax is the same for domestic corporations as it is for foreign corporations. The citizenship of the corporation is confessedly not of legal significance in this connection.[3]

Can it be said that this tax directly burdens interstate commerce? A tax is a direct burden, if laid upon the operation or act of interstate commerce. Thus, a tax is a direct burden where it is upon property moving in interstate commerce, *Champlain Realty Co.* v. *Brattleboro*, 260 U. S. 366; *Eureka Pipe Line Co.* v. *Hallanan*, 257 U. S. 265; *United Fuel Gas Co.* v. *Hallanan*, 257 U. S. 277; or where, like a gross-receipts tax, it lays a burden upon every transaction in such commerce, *Crew Levick Co.* v. *Pennsylvania*, 245 U. S. 292, 297. But a tax is not a direct burden merely because it is laid upon an indispensable instrumentality of such commerce, or because it arises exclusively from transactions in interstate commerce. Thus, a tax is valid although imposed upon property used exclusively in interstate commerce, *Transportation Co.* v. *Wheeling*, 99 U. S. 273, 284; *Old Dominion S. S. Co.* v. *Virginia*, 198 U. S. 299, 306; or, although laid upon net-income derived exclusively from interstate commerce, *United States Glue Co.* v. *Oak Creek*, 247 U. S. 321; *Shaffer* v. *Carter*, 252 U. S. 37, 57. Compare *Peck & Co.* v. *Lowe*, 247 U. S. 165; *Wagner* v.

[2] If the tax assessed is held void, the statute will, in fact, discriminate against intrastate commerce; for the tax is confessedly valid as applied to all corporations which do not engage exclusively in interstate commerce.

[3] It applies also to corporations organized under the laws of a foreign country.

City of Covington, 251 U. S. 95. These taxes were held valid because, unlike a gross-receipts tax, they do not withhold, "for the use of the State, a part of every dollar received in such transactions." See 245 U. S., p. 297. Surely the tax upon the corporate franchise is as indirect as the tax upon the pipe-line.

I find in the Commerce clause no warrant for thus putting a State to the choice of either abandoning the corporate franchise tax or discriminating against intrastate commerce;[4] nor for denying to a State the right to encourage the conduct of business by natural persons through imposing, for the enjoyment of the corporate privilege, an annual tax so small that it cannot conceivably be deemed an obstruction of interstate commerce.